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TAX CERTIFICATE AND AGREEMENT

Dated as of May 11, 2005

between

CALIFORNIA INFRASTRUCTURE AND  
ECONOMIC DEVELOPMENT BANK

and

CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

Relating to

\$36,955,000  
California Infrastructure and  
Economic Development Bank  
Energy Efficiency Master Trust Revenue Bonds  
Series 2005A

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\$36,955,000  
California Infrastructure and Economic Development Bank  
Energy Efficiency Master Trust Revenue Bonds  
Series 2005A

**TAX CERTIFICATE AND AGREEMENT**

This Tax Certificate and Agreement (the “Tax Agreement”) is executed by and between the California Infrastructure and Economic Development Bank (the “Issuer”), an entity within the Business, Transportation and Housing Agency of the State of California (the “State”), and the California Energy Resources Conservation and Development Commission (the “Energy Commission”), a State commission established and existing under and by virtue of the laws of the State of California, pursuant to Sections 5.1 and 5.3 of the 2005A Secured Loan Agreement and Section 505 of the 2005A Bond Indenture (as such documents are hereinafter defined) in connection with the issuance of the \$36,955,000 California Infrastructure and Economic Development Bank Energy Efficiency Master Trust Revenue Bonds, Series 2005A (the “Bonds”). In this Tax Agreement, the Issuer and the Energy Commission are setting forth their expectations as of the date hereof concerning the use of proceeds of the Bonds and the procedures undertaken to ensure that the proceeds of the Bonds are invested, used and applied in compliance with applicable provisions of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations promulgated thereunder (the “Treasury Regulations”). Capitalized terms used but not defined in this Tax Agreement shall have the meanings set forth in Exhibit A attached hereto or in Appendix A to the 2005A Bond Indenture.

Recitals

The Issuer has determined to provide funds to the Energy Commission, through the issuance of the Bonds, in order for the Energy Commission to make or finance loans to certain borrowers, as hereafter described.

The Code, the Treasury Regulations (including final, temporary and proposed regulations) promulgated thereunder and the rulings with respect thereto impose certain limitations on the use and operation of the property financed with the proceeds of the Bonds and on the use and investment of proceeds of the Bonds and certain other moneys relating to the Bonds.

Such provisions of the Code and the Treasury Regulations promulgated thereunder and the rulings with respect thereto set forth certain conditions under which the interest paid and to be paid on the Bonds will not be included in gross income for federal income tax purposes.

The Issuer and the Energy Commission have determined to deliver this Tax Agreement, inclusive of exhibits, to set forth certain facts and estimates that form the basis for the Issuer’s reasonable expectations as to the use and investment of proceeds of the Bonds and of certain other moneys relating to the Bonds and to set forth certain terms and conditions relating thereto in order to assure that interest on the Bonds is not included in gross income for federal income tax purposes.

## ARTICLE I.

### GENERAL

Section 1.1. Purpose of Tax Agreement. The undersigned are executing this Tax Agreement on behalf of the Issuer and the Energy Commission with the understanding and acknowledgement that Sidley Austin Brown & Wood LLP, bond counsel (referred to herein as “Bond Counsel”), will rely on the representations and the certifications made in this Tax Agreement in rendering its opinion that interest on the Bonds is excluded from gross income for federal income tax purposes.

Section 1.2. Description of Bonds. The Bonds are being issued pursuant to a Bond Indenture, dated as of May 1, 2005 (the “2005A Bond Indenture”), by and between the Issuer and the J.P. Morgan Trust Company, National Association, as trustee (the “Trustee”), an Amended and Restated Master Trust Agreement, dated as of April 27, 2005 (the “Master Trust Agreement”), by and between the Issuer and J.P. Morgan Trust Company, National Association, as successor trustee (the “Master Trustee”), and a Secured Loan Agreement, dated as of May 1, 2005 (the “2005A Secured Loan Agreement”), by and between the Issuer and the Energy Commission. The date, maturities, denominations, rates of interest and redemption features of the Bonds are described in the 2005A Bond Indenture.

Section 1.3. Governmental Purpose. The proceeds derived from the sale of the Bonds, together with investment earnings thereon, will be used to make a loan (the “Secured Loan”) to the Energy Commission from the Issuer pursuant to the 2005A Secured Loan Agreement. Such proceeds will be further loaned by the Energy Commission to eligible Borrowers (defined below), which, pursuant to Chapter 5.2 of Division 15 of the California Public Resources Code (the “Energy Conservation Assistance Act”), has the responsibility to administer an energy efficiency loan program (the “Program”), the purpose of which is to make loans, including loans originated with proceeds of the Bonds (each a “2005 Bond Funded Loan” and collectively the “2005 Bond-Funded Loans”) to eligible public entity (*i.e.*, Governmental Person) borrowers (each a “Borrower” and collectively the “Borrowers”) for energy conservation and efficiency projects pursuant to individual borrower loan agreements (each a “Borrower Loan Agreement” and collectively the “Borrower Loan Agreements”). The Energy Commission will use the proceeds of the Bonds to provide financial assistance to eligible Borrowers located throughout the State, evidenced by an obligation or obligations of the Borrowers to make loan repayments to the Energy Commission (the “Bond-Funded Loan Repayments”). Each Borrower will use such financial assistance directly to finance the capital costs of acquisition, installation and implementation of an energy conservation project (each a “Borrower Project” and collectively the “Project”). Since 1979, the Energy Commission has made energy efficiency loans, from the Energy Conservation Assistance Account, created pursuant to the Energy Conservation Assistance Act of 1979, California Public Resources Code Division 15, Chapter 5.2 (Sections 25410-25421) (the “Energy Conservation Assistance Act”), to schools, hospitals and public care institutions and units of local government (“ECAA Loans”). Since 1986, the Energy Commission has made energy efficiency loans from the Local Jurisdiction Energy Assistance Account created pursuant to California Public Resources Code Division 15, Chapter 5.4 (Sections 25440-25449.4) (the “Local Jurisdiction Energy Assistance Law”) to local jurisdictions, which loans are repayable from energy savings and any other legally available

sources ("LJEA Loans"). The Bonds will be secured, among other things, by ECAA Loans and LJEA Loans heretofore originated by the Energy Commission with available funds of the Energy Commission (each an "Equity-Funded Loan") and loans funded with proceeds of the \$28,005,000 aggregate principal amount of Energy Efficiency Master Trust Revenue Bonds, Series 2003 (the "2003 Bonds"), issued by the California Consumer Power and Conservation Financing Authority (each a 2003 Bond-Funded Loan and collectively the "2003 Bond-Funded Loans" and, together with the Equity-Funded Loans, the "Existing Loans") pursuant to individual Borrower Loan Agreements. For purposes of this Tax Agreement, the Borrower Loan Agreements relating to 2005 Bond-Funded Loans may be referred to herein as the 2005 Bond-Funded Borrower Loan Agreements, the Borrower Loan Agreements relating to the 2003 Bond-Funded Loans may be referred to herein as the 2003 Bond-Funded Borrower Loan Agreements, the Borrower Loan Agreements relating to Equity-Funded Loans may be referred to herein as the Equity-Funded Loan Agreements and the Loan Agreements relating to the Existing Loans (which include the 2003 Bond-Funded Loans and the Equity-Funded Loans) may be referred to herein as the Existing Loan Agreements. Any loan made to a Borrower from proceeds derived from the sale of the Bonds will, for purposes of this Tax Agreement, be characterized and referred to herein as a 2005 Bond-Funded Loan, regardless of whether amounts previously advanced to such Borrower prior to the date of issuance of the Bonds may have come from other sources. The term "Borrower" may be used herein to refer to both Borrowers with respect to 2005 Bond-Funded Loans, Borrowers with respect to 2003 Bond-Funded Loans, Borrowers with respect to Equity-Funded Loans and Borrowers with respect to Existing Loans (which include the 2003 Bond-Funded Loans and the Equity-Funded Loans). Unless the context requires otherwise in this Tax Agreement, the term Borrower will ordinarily refer to Borrowers with respect to 2005 Bond-Funded Loans.

Section 1.4. Sale and Issuance of Bonds. The Bonds are being delivered on May 11, 2005 (the "Issue Date") to Goldman, Sachs & Co. (the "Underwriter"), for resale to the general public. The Underwriter is delivering good funds in exchange for the Bonds on the Issue Date. Public Financial Management, Inc. and Lamont Financial Services Corporation serve as the Co-Financial Advisors to the Issuer with respect to the issuance of the Bonds.

Section 1.5. Composite Issue. All the Bonds are being sold at the same time, have been sold pursuant to the same plan of financing, and are reasonably expected to be paid from substantially the same source of funds. Accordingly, the Bonds are a single issue of obligations for certain federal income tax purposes relating to the exclusion from gross income of interest on the Bonds. No other governmental obligations which are reasonably expected to be paid from substantially the same source of funds are being sold at substantially the same time and sold pursuant to the same plan of financing as the Bonds.

Section 1.6. Reliance on Other Parties. To the extent the Issuer and/or the Energy Commission makes any representation in this Tax Agreement concerning any action to be taken or expected to be taken by any Borrower of amounts representing Bond proceeds, each does so in reliance on the representations of such Borrowers set forth in the Borrower Tax Certificate which the Energy Commission will require each Borrower to execute prior to receiving any Bond proceeds, a form of which is attached hereto as Exhibit D. The Issuer and the Energy Commission each believe that such reliance is reasonable and prudent. Neither the Issuer nor the Energy Commission is aware of any fact or circumstance that would cause either to question the

accuracy or reasonableness of any representation, certification or decision made in this Tax Agreement or the exhibits hereto.

The expectations of the Issuer concerning uses of proceeds of the Bonds and other moneys described herein and other matters are based exclusively upon representations and certifications of the Energy Commission. With regard to covenants of the Issuer to act or refuse to act in a certain manner in the future, the Issuer is exclusively relying on the Energy Commission to act or refuse to act in the appropriate manner except to the extent a particular action by the Issuer is required or prohibited (e.g., the Issuer must actually execute and file any Form 8038-G information return that is required).

Section 1.7. Reasonable Expectations. The Issuer's reasonable expectations and certifications set forth in this Tax Agreement are based entirely on those of the Energy Commission or other parties whose certifications or representations are set forth in the exhibits hereto. The Energy Commission has investigated the facts, estimates, and circumstances surrounding the issuance of the Bonds. To the best of the Energy Commission's knowledge and belief, such facts, estimates and circumstances are true, correct, and complete, and its expectations are reasonable, and the Issuer has no reason to believe that any such facts, estimates or circumstances as certified to by the Energy Commission are not true, correct and complete. Any statements in this Tax Agreement involving future events, whether or not expressly so stated, are intended as expectations of the Energy Commission and not representations of fact. On the basis of such facts, estimates, and circumstances, the Energy Commission, and to the extent represented by the Energy Commission in this Tax Certificate, the Issuer, reasonably expect that the Gross Proceeds of the Bonds will not be used in a manner that would cause the Bonds to be considered "private activity bonds" under Section 141 of the Code or "arbitrage bonds" under Section 148 of the Code.

Section 1.8. Authority of Signatories. The undersigned are duly authorized officials of the Issuer and the Energy Commission, respectively, each charged, with others, with responsibility for the execution, delivery, and issuance of the Bonds.

## ARTICLE II.

### USE OF BOND PROCEEDS

Section 2.1. No Private Use of Bond Proceeds. Based on representations of the Borrowers of amounts representing Bond proceeds and the terms and provisions of the Program, the Energy Commission represents as follows:

(A) In General. No more than the lesser of 10% of the Proceeds Net of Costs of the Bonds or the Project (based on the cost of the components of the Project or, with respect to a unitary structure, on the relative fair rental value of such components) has been or will be used in the aggregate for any activities that constitute a Private Use. No more than 10% of the principal of or interest on the Bonds, under the terms thereof or any underlying arrangement, has been or will be secured by any interest in property (whether or not a Project) used for a Private Use or in payments in respect of property used for a Private Use, or will be derived from payments in respect of property used for a Private

Use. The Borrowers in their Borrower Tax Certificates will each covenant that the facilities financed with proceeds of the Bonds will not involve any Private Use. Should the Energy Commission hereafter be approached by a Borrower regarding the potential for Private Use of any Project other than as delineated above, the Energy Commission may consult with Bond Counsel before authorizing any such Private Use. The proceeds of the Bonds will be loaned only to Governmental Persons. None of the proceeds of the Bonds will be loaned to any other entity, including an organization described in Section 501(c)(3) of the Code. Sales or other dispositions of the Project or any portion thereof by any Borrower shall be governed by Section 2.6 below.

(B) No Private Loan Financing. No more than the lesser of 5% of the Proceeds Net of Costs of the Bonds or \$5,000,000 will be used to make or finance loans to any person other than to Governmental Persons.

(C) Management and Service Contracts. With respect to management and service contracts that pertain to any portion of the Project, the determination of whether a particular use constitutes Private Use will be determined on the basis of applying Section 1.141-3(b)(4) of the Treasury Regulations and Revenue Procedure 97-13, 1997-1 C.B. 632, as amended by Revenue Procedure 2001-39, 2001-28 I.R.B. 38 (collectively, "Revenue Procedure 97-13." For purposes of determining the nature of a Private Use, any arrangement that is properly characterized as a lease for federal income tax purposes is treated as a lease. Each Borrower in its Borrower Tax Certificates will covenant that its will not permit there to be a management or service contract with a person other than a Governmental Person with respect to its Borrower Project except as permitted by law, which is intended to mean that such contract complies with Revenue Procedure 97-13. Further, each Borrower will represent, in its Borrower Tax Certificate, that, as of the date of the execution of such Borrower's Loan, the Borrower is not a party to any management or service contract with a person other than a Governmental Person with respect to its Borrower Project, except for a contract that complies with the Revenue Procedure 97-13. Should the Energy Commission hereafter be approached by a Borrower regarding a management or service contract pertaining to any property financed with proceeds of the Bonds, the Energy Commission may consult with Bond Counsel before authorizing the Borrower to proceed with such contract.

Section 2.2. Calculation of Bond Proceeds. The net amount derived from the sale of the Bonds is \$38,893,301.27 (representing the par amount of the Bonds of \$36,955,000.00, plus net original issue premium of \$2,242,178.65, less Underwriter's Discount of \$303,877.38).

Section 2.3. Application and Deposit of Bond Proceeds. The following states the expectations of the Energy Commission with respect to the amount and uses of the proceeds derived from the sale of the Bonds and certain other moneys or property:

(A) \$652,500.00 of such amount will be deposited on the Issue Date to the 2005A Cost of Issuance Account and used within six months to pay costs incurred in connection with the issuance of the Bonds; and

(B) \$38,240,801.27 of such amount will be deposited on the Issue Date to the 2005A Bond Proceeds Account and used by the Energy Commission within three years to make loans to Borrowers to finance the various facilities of the Borrowers that constitute the Project.

The Issuer and the Energy Commission covenant to use the proceeds of the Bonds and the other amounts described above solely for the above-described purposes, unless a written opinion of Bond Counsel is obtained to the effect that a use of Bond proceeds for other than the above-described purposes will not adversely affect the exclusion from gross income of interest on the Bonds for federal income tax purposes.

Section 2.4. 2005A Bond Proceeds Account. The proceeds of the Bonds to be used to finance costs of Project will be held in the 2005A Bond Proceeds Account pending their use. A Project eligible for financing with proceeds of the Bonds will be funded by the Energy Commission by periodically transferring funds to each Borrower pursuant to a cost-reimbursement disbursement process while the Project is being constructed or shortly thereafter. A Borrower will not be entitled to any earnings received from investments of amounts held in the 2005A Bond Proceeds Account. All amounts disbursed to Borrowers under the 2005 Bond-Funded Loans will be effected on a "reimbursement" basis, meaning that a Borrower will have expended moneys on property constituting a capital expenditure and permitted under the Program and then have submitted to the Energy Commission documentation of the property for which reimbursement is sought to enable the Energy Commission to evaluate and determine whether such property qualifies for loan financing under the Program. The Energy Commission will review such expenditure and determine whether and in what amount proceeds of the Bonds will be disbursed to the Borrower. When appropriate, the Energy Commission may effect loans to Borrowers through direct payments to the vendors of such borrowers.

Section 2.5. Pooled Financing Bond Temporary Period. The proceeds derived from the sale of the Bonds, together with investment earnings thereon, will be used to make loans, consisting of the 2005 Bond-Funded Loans, to two or more unrelated persons. As the mix of 2005 Bond-Funded Loans made to Borrowers to finance the acquisition of energy efficiency equipment and 2005 Bond-Funded Loans made to Borrowers to finance the construction of real property improvements is uncertain, it will be presumed for purposes of this Tax Certificate that less than 75% of the 2005 Bond-Funded Loans will be used to finance the construction of real property improvements and, accordingly, the proceeds derived from the sale of the Bonds may be invested at an unrestricted yield for a period of six months from the date hereof.

Section 2.6. No Sale or Disposition of Project. Each Borrower will covenant, in its Borrower Tax Certificate, that, during the time the Borrower's 2005 Bond-Funded Loan is outstanding, it shall not sell or dispose of any portion of its Borrower Project to an entity that is not a Governmental Unit. In the event the Borrower sells or disposes of the Borrower Project or any portion thereof to a Governmental Unit, the Borrower shall, upon such sale or disposition, repay the Loan or portion thereof allocable to the Project or portion thereof, as the case may be, and shall apply any proceeds it derives from the sale of the Project or portion thereof, as the case may be, to such repayment.

Section 2.7. Expected Demand for 2005 Bond-Funded Loans. The Energy Commission has prepared a report, entitled *Loan Demand Analysis Report*, dated April 26, 2005, a copy of which is attached hereto as Exhibit I, in which the Energy Commission sets forth seven factors supporting its reasonable expectations that all of the proceeds derived from the sale of the Bonds, net of amounts to be used to pay Costs of Issuance, will be used within three years of the date hereof to disburse funds under 2005 Bond-Funded Loans to Borrowers. The Energy Commission prepared a similar report with respect to and in support of the issuance of the 2003 Bonds, and, as of the date hereof, which is approximately 26 months after the 2003 Bonds were issued, the Commission has disbursed \$15,528,430.58 of proceeds of the 2003 Bonds under 2003 Bond-Funded Loans and reasonably expects that all of the proceeds of the 2003 Bonds, net of costs of issuance with respect to the 2003 Bonds, will be disbursed to Borrowers as 2003 Bond-Funded Loans within three years of the date of issuance of the 2003 Bonds. Accordingly, the Issuer and the Energy Commission reasonably expect that there is sufficient demand for proceeds of the Bonds in a time frame that will satisfy the requirement of federal income tax law, including Sections 148 and 149 of the Code. For each draw of proceeds of the Bonds made to fund any portion of any 2005 Bond-Funded Loan, the Energy Commission shall ensure that each invoice submitted by any Borrower is reviewed and that no money is disbursed under such 2005 Bond-Funded Loan for any purpose other than an actual capital expenditure previously paid by such Borrower. The Energy Commission acknowledges that, as provided in the Borrower Tax Certificate, no portion of any proceeds of the Bonds will be disbursed to any Borrower either for any loans or investments made by the Borrower or to pay the principal of or interest on any debt obligation of the Borrower.

### ARTICLE III.

#### PAYMENT OF DEBT SERVICE ON THE BONDS

Section 3.1. Expected Sources of Payment of Debt Service on the Bonds and Application of 2005 Bond-Funded Loan Payments. The Energy Commission expects to make payments of principal of and interest on the Bonds from payments (including prepayments) of principal of and interest on the Existing Loans and earnings on various Indenture funds and accounts, as provided for in the 2005A Secured Loan Agreement, but not from 2005 Bond-Funded Loans financed with proceeds of the Bonds. The Issuer and the Energy Commission deem those payments of principal of or interest on the Existing Loans pledged to the Bonds that were the earliest payments received by the Energy Commission no earlier than 13 months before the date of payment of debt service on the Bonds as the payments used so to pay debt service on the Bonds. The Energy Commission reasonably expects that the period between such payments and the use of such amounts to pay debt service on the Bonds will not exceed one year. Subject to the use of certain amounts as provided in the next sentence and also subject to 2005 Bond-Funded Loans being pledged in the future to a subsequent series of bonds issued for the benefit of the Energy Commission, amounts received by the Energy Commission representing the principal of and interest on the 2005 Bond-Funded Loans will be deposited into a subaccount of the Energy Conservation Assistance Account, invested in temporary investments and used to make additional 2005 Bond-Funded Loans to Borrowers or to fund reserves for subsequent bond issues. All or a portion of the interest accrued and paid on the 2005 Bond-Funded Loans may be used by the Commission to pay certain administrative expenses of the Commission in operating and carrying out the Program or for any other purpose authorized by law other than making

additional loans or may fund reserves for subsequent bond issues. The principal of and interest on the 2005 Bond-Funded Loans to be used to make additional 2005 Bond-Funded Loans may be invested at an unrestricted yield until expended for period of up to three months from the date of deposit of such amounts to the Energy Conservation Assistance Account for the purpose of making additional 2005 Bond-Funded Loans. The principal of and interest on the 2005 Bond-Funded Loans to be used for purposes other than the making of additional 2005 Bond-Funded Loans may be invested at an unrestricted yield.

Section 3.2. Funds and Accounts Established for Payment of Debt Service on the Bonds. The Energy Commission represents the following with respect to the expected sources of payment of debt service on the Bonds:

(A) Separate Funds, Accounts and Subaccounts. The 2005A Bond Indenture provides that moneys in any fund or account therein relating to the Program are to be held separate and apart from any other moneys held therein. To accomplish such separation, separate trust accounts within the Energy Conservation Assistance Account created pursuant to the Energy Conservation Assistance Act and subaccounts in such funds or accounts are or will be maintained for moneys relating to the Program. The Master Trust Agreement provides that each series of bonds issued under the related Bond Indenture will be secured separate and apart from any other series of bonds issued under a Bond Indenture, except that all amounts on deposit in the Master Reserve Account created under the Master Trust Agreement will be available for the payment of debt service, if needed, on any series of bonds issued under any Bond Indenture related to the Program ("Master Trust Revenue Bonds").

(B) Loan Repayment Account and Debt Service Account. The 2005A Secured Loan Agreement directs the Energy Commission to transfer to the Trustee, for deposit into the Loan Repayment Account, all 2005A Loan Repayments promptly after receipt thereof. Three Business Days before the due date of any payment of interest on or principal of the Bonds, the Trustee is to withdraw from the Loan Repayment Account and deposit into the Debt Service Account the amount needed to pay required interest on or principal of the Bonds, all as provided in the 2005A Bond Indenture.

(C) 2005A Reserve Account. The 2005A Reserve Account was established pursuant to the 2005A Bond Indenture. Amounts may be withdrawn from such account from time to time solely for the purpose of making up any deficiency in the Debt Service Account, as defined in Section 3.3 below. The 2005A Reserve Account will be funded with \$7,871,415.00 of existing moneys contributed by the Energy Commission on the date hereof. To the extent the 2005A Reserve Account does not exceed the least of 10% of the proceeds of the Bonds, maximum annual debt service on the Bonds and 125% of average annual debt service on the Bonds, amounts in the 2005A Reserve Account may be invested at an unrestricted yield. To the extent amounts in the 2005A Reserve Account are in excess of the least of such amounts, such amounts must be yield-restricted, but would be eligible for yield reduction payments pursuant to Section 1.148-5(c) of the Treasury Regulations. The Underwriter has represented in Exhibit B that the funding of the 2005A Reserve Account in such amount provides a source of security that facilitates the marketing of the Bonds at the interest rates provided thereon, which rates

are comparable to those of bond issues of a similar character, is a vital factor in marketing the Bonds, and is not in excess of the amount necessary for such purpose. The term "proceeds" for purposes of this subsection means the stated principal amount of the Bonds unless the Bonds have been sold and issued to the public with more than De Minimis Discount or Premium.

(D) Master Reserve Account. In addition to amounts in the 2005A Debt Service Account created under the 2003A Bond Indenture, all amounts on deposit in the Master Reserve Account created under the Master Trust Agreement will be available for the payment of debt service, if needed, on any series of Master Trust Revenue Bonds. As of the date hereof, there are no amounts in the Master Reserve Account. To the extent amounts are held in the Master Reserve Account due to a deficiency related to a particular issue of bonds, including the Bonds, such amounts would be yield-restricted, and/or subject to arbitrage rebate, based on the yield on such issue of bonds, including the Bonds.

Section 3.3. Qualification of Certain Funds and Accounts as a Bona Fide Debt Service Fund. Amounts in the Loan Repayment Account and the Debt Service Account will constitute a Bona Fide Debt Service Fund for the Bonds (the Loan Repayment Account may hereinafter be referred to as the Bona Fide Debt Service Fund). Amounts in the Surplus Repayment Account will not constitute a Bona Fide Debt Service Fund as amounts therein may be held therein for a substantial period of time. The Energy Commission does not expect to pay current debt service on the Bonds from any source other than the Bona Fide Debt Service Fund. Amounts so held in the Bona Fide Debt Service Fund may be invested at an unrestricted yield until used to pay debt service on the Bonds, for a period not to exceed 13 months from the date of deposit of such amounts to the Bona Fide Debt Service Fund.

Section 3.4. No Other Funds Established for Payment of Debt Service on the Bonds. Other than the funds and accounts described or referenced in this Article III, the Issuer and the Energy Commission have neither created or established nor intend to create or establish any sinking fund, reserve account or similar fund for the payment of debt service on the Bonds or any other fund or account that may be pledged as security or collateral for the Bonds or that are reasonably expected to be used for the payment of principal and interest on the Bonds and for which there is a reasonable assurance that amounts on deposit therein will be available for the payment of principal and interest on the Bonds if the Energy Commission or the Borrowers encounter financial difficulties. Each Borrower will certify in its Borrower Tax Certificate that, it shall not set aside any moneys to pay debt service on its Loan in advance of such payments and shall not establish any other fund or account that is reasonably expected to pay debt service on the Loan or that is otherwise pledged as collateral for the Loan so as to create a reasonable assurance that such fund or account would be available to pay debt service on the Loan in the event the Borrower were to encounter financial difficulties.

Section 3.5. No Negative Pledges. Other than the fund and accounts referenced herein, there are no amounts held under any agreement to maintain amounts at a particular level for the direct or indirect benefit of the holders of the Bonds or guarantor of the Bonds, if any, excluding for this purpose amounts in which the Energy Commission (or a substantial beneficiary) may grant rights that are superior to the rights of the holders of the Bonds or guarantor of the Bonds,

if any, and amounts that do not exceed reasonable needs for which they are maintained and as to which the required level is tested no more frequently than every six months and that may be spent without any substantial restriction other than a requirement to replenish the amount by the next testing date.

Section 3.6. Rebate Account(s). Amounts deposited in the Rebate Account established under the 2005A Bond Indenture are to assist the Issuer and the Energy Commission with compliance of Section 148(f) of the Code. Moneys in the Rebate Account are neither pledged to nor expected to be used to pay debt service on the Bonds. Proceeds of the Bonds are not expected to be held in the Rebate Account. Amounts held in the Rebate Account, to the extent funded with amounts other than proceeds derived from the sale of the Bonds and investment earnings thereon, may be invested without regard to Yield.

#### ARTICLE IV.

##### GENERAL INVESTMENT AND REBATE RESPONSIBILITY

Section 4.1. Investment Restrictions and Arbitrage Rebate Requirement. The exclusion of the interest on the Bonds from the gross income of bondholders for federal income tax purposes depends in part on compliance with the arbitrage limitations imposed by Section 148 of the Code with respect to the investment of the proceeds of the Bonds. These limitations include (i) the general arbitrage restrictions described in Article V, (ii) the Yield Reduction Payments described in Sections 5.4 and 5.5 below, (iii) the arbitrage rebate requirement described in Article VI, and (iv) the prohibition on federal guarantees set forth in Article VIII. Subject to these limitations, and except as otherwise provided with respect to any Borrower of amounts representing Bond proceeds, the Energy Commission shall direct, in consultation with the State Treasurer's Office and the Issuer, the investment of all amounts held respectively under the 2005A Bond Indenture, including amounts held in the 2005A Bond Proceeds Account, at all times until such amounts are allocated to expenditures in the manner specified by the accounting provisions of Section 1.148-6(d) of the Regulations. The Energy Commission shall maintain or cause to be maintained the records relating to the Investments it controls that are hereinafter required. The Energy Commission shall also be responsible for performing all rebate and/or penalty calculations for Nonpurpose Investments acquired with Gross Proceeds held under the 2005A Bond Indenture as to which it has investment responsibility as set forth above. In furtherance of this requirement, at all times during which the Bonds are outstanding, the Energy Commission shall engage the services of a rebate consultant acceptable to the Issuer. The initial rebate consultant is MuniFinancial (A member of the Wildan Group of Companies), 27368 Via Industria, Suite 110, Temecula, California 92590 ([www.muni.com](http://www.muni.com)).

#### ARTICLE V.

##### GENERAL ARBITRAGE RESTRICTIONS

Section 5.1. General Rule and the Excepted Amounts. The general arbitrage limitations imposed under Section 148(a) of the Code restrict the spread permitted between (i) the yield on the Bonds and (ii) the yield on Investments acquired with Gross Proceeds of the Bonds. The amounts of Gross Proceeds listed below in Subsections 5.1(A) through (H) are

excepted from the general arbitrage limitations and, subject to the arbitrage rebate requirements of Section 148(f) of the Code, may be invested without restriction as to Yield to the extent specified herein:

(A) proceeds of the Bonds deposited to the 2005A Bond Proceeds Account until six months after the Issue Date;

(B) earnings on Investments held in the 2005A Bond Proceeds Account until one year following date of receipt of the amount earned;

(C) amounts in the 2005A Reserve Account to the extent not exceeding the least of the standards set forth in Section 3.2(C) above;

(D) earnings on investments acquired with Gross Proceeds of the Bonds (including investments held in the 2005A Bond Proceeds Account, the 2005A Reserve Account and the Master Reserve Account) until one year following the date of receipt of the amount earned;

(E) amounts held in the Bona Fide Debt Service Fund for the Bonds as described in Section 3.3 above and the earnings thereon to the extent used to pay debt service on the Bonds until 13 months after the date of initial receipt;

(F) amounts in the Energy Conservation Assistance Account constituting Bond-Funded Loan Repayments that are reasonably expected to be used to originate additional loans to Borrowers, until three months from the date of deposit of such principal and interest to the Energy Conservation Assistance Account;

(G) amounts in the Surplus Repayment Account, not more than 30 days from the date of initial receipt; and

(H) proceeds of the Bonds to be used to pay costs incurred in connection with the issuance of the Bonds until 13 months after the Issue Date, or, if earlier, the date they are used for their intended purposes.

Amounts in the Energy Conservation Assistance Account derived from the principal of and/or interest on 2005 Bond-Funded Loans that are not reasonably expected to be used to originate additional loans to Borrowers may be invested at an unrestricted yield without regard to a temporary period.

Section 5.2. Investment in Tax-Exempt Obligations. Notwithstanding anything contained herein to the contrary, proceeds of the Bonds may be invested without restriction as to Yield and any investment earnings thereon may be expended without regard to the arbitrage rebate requirements of Article VI if such proceeds are invested in Tax-Exempt Obligations.

Section 5.3. Calculation of Yield. The Energy Commission represents the following with respect to the Bonds:

(A) Issue Price. Based on the representations of the Underwriter pertaining to the bona fide public offering of the Bonds (attached hereto as Exhibit B), the Issue Price of the Bonds is \$39,197,178.85 (representing the par amount of the Bonds of \$36,955,000.00 plus net original issue premium of \$2,242,178.85).

(B) Redemption. The Bonds maturing on or before March 1, 2015, are not subject to redemption prior to their respective maturities. The Bonds maturing on or after March 1, 2016, are subject to redemption, at the option of the Issuer (at the direction of the Energy Commission), on March 1, 2015, at the par value thereof.

(C) Special Rule for Term Bonds. None of the Bonds is a term bond requiring a mandatory sinking fund payment on a date prior to its stated maturity date.

(D) Premium Bonds. As stated in the certification of the Underwriter attached as Exhibit B hereto, the Bonds stated to mature on March 1 in the years 2016, 2017 and 2018 (collectively, the "Callable Premium Bonds") were sold at a premium and are subject to optional redemption prior to their maturity. Further, the issue price of all of the Callable Premium Bonds exceeds the stated redemption price at maturity of such Callable Premium Bonds by more than one-fourth of one percent multiplied by the product of the stated redemption price at maturity and the number of complete years to March 1, 2015, the first optional redemption date for each such maturity of Callable Premium Bonds (102.25%). Accordingly, the yield on the Bonds is required to be computed by treating each maturity of the Callable Premium Bonds as redeemed at its stated redemption price on the date that produces the lowest overall yield on the Bonds. The Underwriter, in its certificate attached hereto as Exhibit B, represents that redeeming all of the Callable Premium Bonds on March 1, 2015, at a price of 100% of par, produces the lowest overall yield on the Bonds.

(E) No Qualified Hedge. Neither the Issuer nor the Energy Commission has entered into any hedge or other derivative product with respect to the Bonds.

(F) No Qualified Guarantee. Neither the Issuer nor the Energy Commission has entered into any Qualified Guarantee with respect to the Bonds.

(G) Yield on the Bonds. The Bonds are being issued as a Fixed Yield Issue. Accordingly, the yield on the Bonds has been calculated as the discount rate that, when used in computing the Present Value as of the Issue Date of all unconditionally payable payments of principal and interest on the Bonds, produces an amount equal to the Present Value, using the same discount rate, of the aggregate Issue Price of the Bonds as of the Issue Date. Based on the foregoing, the yield on the Bonds has been calculated by the Underwriter to be not less than 3.5690729%. The yield on the Bonds will not be affected by subsequent unexpected events, except to the extent provided in Section 1.148-4(h)(3) of the Regulations.

Section 5.4. Investments Subject to Yield Restriction. Nonpurpose Investments not listed in Subsections 5.1(A) through (H) above will be invested at a Yield that is not materially higher than the yield on the Bonds. The yield on a Nonpurpose Investment is materially higher

than the yield on the Bonds if it exceeds the yield on the Bonds (i) by more than .125% if the Nonpurpose Investments are to be used for construction of a Project, or (ii) by any amount if the Nonpurpose Investments are allocated to the 2005A Cost of Issuance Account or the 2005A Debt Service Account.

Section 5.5. Yield Reduction Payments. Notwithstanding the provisions of this Tax Agreement that require the Energy Commission to invest the proceeds of the Bonds and investment earnings thereon at a Yield not in excess of the yield on the Bonds, the yield on certain Nonpurpose Investments acquired with proceeds of the Bonds will not be considered to be materially higher than the yield on the Bonds if the Energy Commission makes Yield Reduction Payments to the United States. The Energy Commission covenants to consult with Bond Counsel prior to making any Yield Reduction Payments. Exhibit A sets forth seven situations in which yield reduction payments are allocable as a vehicle to reduce the yield on an investment. One of such situations would allow the portion of the 2005A Reserve Account in excess of the standards set forth in Section 3.2(C) to be eligible for the use of yield reduction payments to reduce the yield on the investments held in the 2005A Reserve Account. Other of such situations, not intending to be exclusive, would allow proceeds derived from the sale of the Bonds qualifying for the temporary period set forth in Section 5.1(A) above and repayments of 2005 Bond-Funded Loans deposited in the Energy Conservation Assistance Account to be used to make additional 2005 Bond-Funded Loans to Borrowers qualifying for the temporary period set forth in Section 5.1(F) above, to be eligible for the use of yield reduction payments to reduce the yield on the investments in which such proceeds or payments, as the case may be, are invested.

Section 5.6. Program Obligations. The 2005 Bond-Funded Loans to Borrowers pursuant to the Borrower Loan Agreements will be classified as program obligations for federal income tax purposes as the Program complies with the provisions of Section 1.148-1(b) of the Regulations. In addition, the Secured Loan will be classified as a program obligation for federal income tax purposes. For purposes of this Section 5.6, the 2005 Bond-Funded Loans and the Secured Loan will collectively be referred to as the Purpose Investments. In addition, the Existing Loans will be treated as being part of the Purpose Investments. All such loans, other than 2005 Bond-Funded Loans that are treated as tax-exempt loans as a result, among other things, of filing an IRS Form 8038-G, Information Return for Tax-Exempt Governmental Obligations ("Form 8038-G"), with respect to such 2005 Bond-Funded Loans, may have a yield not exceeding 1-1/2% above the yield on the Bonds (note for this purpose that the composite yield on the 2005 Bond-Funded Loans and the Existing Loans must not exceed 1-1/2% above the yield on the Bonds and must not exceed 1-1/2% above the yield on the Secured Loan). 2005 Bond-Funded Loans and Bond-Funded Loans originated with Bond-Funded Loan Repayments that are allocable to the Bonds as a result of the allocation described in Section 5.7 below and that are treated as tax-exempt loans as a result, among other things, of filing a Form 8038-G with respect to such 2005 Loans are permitted to have an unrestricted yield.

(A) The program of the Issuer, as issuer of the Bonds (the "Issuer Program"), involves the origination or acquisition of Purpose Investments, which consist of the 2005 Bond-Funded Loans and the Existing Loans;

(B) At least 95% of the cost of all the Purpose Investments acquired under the Issuer Program represents the cost of one or more loans to a substantial number of persons representing the general public, states or political subdivisions, 501(c)(3) organizations or any combination of the foregoing;

(C) At least 95% of all of the receipts from the Purpose Investments (other than amounts deposited in the Rebate Account(s)) shall be used (i) to pay principal of or interest on obligations of the Issuer that financed the Issuer Program, (ii) to pay or reimburse the Issuer for administrative costs of issuing such obligations or of the Issuer Program, (iii) to pay or reimburse the Issuer for anticipated future losses directly related to the Issuer Program; (iv) to finance or refinance additional Purpose Investments for the same general purposes of the Issuer Program; or (v) to redeem or retire governmental obligations of the Issuer at the next earliest possible date of redemption.

(D) The Issuer has not waived the right to treat the Purpose Investments as Program Investments; and

(E) No person or related persons, as defined in Code Section 144(a)(3), from whom the Issuer or the Energy Commission may acquire Purpose Investments may be permitted to purchase the Bonds or any other obligations of the Issuer and the Energy Commission financing the Issuer Program and the Program, respectively, in an amount related to the amount of the Purpose Investment acquired by the Issuer or the Energy Commission from that obligor.

Section 5.7. Allocation of Bond-Funded Loan Repayments. For purposes of compliance with the arbitrage requirements of Section 148 of the Code, including the Rebate Requirement (hereinafter defined), the Energy Commission shall allocate Bond-Funded Loan Repayments among all outstanding tax-exempt bond issues, including the Bonds and the 2003 Bonds, in accordance with the relative principal amount of each such series of bonds. The principal amount of a series of bonds, for this purpose, shall mean the original principal amount of such series of bonds, and shall not be adjusted to reflect the repayment or prepayment of the principal of any such series; provided, however, that upon the issuance of a new series of bonds, for purposes of such allocation, the principal amount of any previously issued series shall be adjusted to be equal to the outstanding principal amount of such series as of the date of issuance of such new series.

Section 5.8. Economic Life of the Project. Based on the representations of the Energy Commission of amounts representing Bond proceeds and the terms and provisions of the Program, the average maturity of the Bonds, 6.2826 years, does not exceed 120% of the average reasonably expected economic life of the Project.

## ARTICLE VI.

### REQUIRED REBATE TO THE UNITED STATES

Section 6.1. Introduction. Section 148(f) of the Code imposes an arbitrage rebate requirement (the "Rebate Requirement") as a condition to the exclusion of interest on the Bonds

from gross income for federal income tax purposes. To comply with the Rebate Requirement, the Issuer will require the Energy Commission to periodically rebate to the federal government certain excess earnings received from the investment of the Gross Proceeds of the Bonds in Nonpurpose Investments from the sources described and in the amounts calculated as set forth in Section 6.2 below. The Issuer and the Energy Commission agree to comply with each of the procedures described herein in order to meet the Rebate Requirement. To the extent that any of the procedures set forth herein are determined to be inconsistent with any Treasury Regulations governing compliance with the Rebate Requirement, the Treasury Regulations shall control. Other than actions the Issuer is specifically required to take (e.g., execution and filing of forms with the IRS in connection the rebate payment), the Energy Commission assumes the Issuer's responsibilities for ensuring that the Rebate Requirement is satisfied.

Section 6.2. Calculation of Rebate Amount. The Rebate Requirement requires the payment to the United States of the excess of the amount earned on the investment of Gross Proceeds in Nonpurpose Investments over the amount that would have been earned on such Investments had the amount so invested been invested at a rate equal to the yield on the Bonds, together with any income attributable to such excess. Except as provided below in Subsections 6.2(D) through (J), all the Gross Proceeds of the Bonds are subject to this arbitrage rebate requirement. In order to meet this arbitrage rebate requirement, the Energy Commission will take the following actions:

(A) Record of Investments and Expenditures. For each Nonpurpose Investment acquired with or allocated to Gross Proceeds of the Bonds, the Energy Commission will record or cause to be recorded the purchase date or allocation date of such Investment; its purchase price if it is acquired directly with Gross Proceeds or, if not acquired directly with Gross Proceeds, its Value on the date the Nonpurpose Investment is allocated to Gross Proceeds; the accrued interest due on its purchase date or allocation date; its face amount, coupon rate, Yield, and the frequency of its interest payment; its disposition price, the accrued interest due on its disposition date and its disposition date; its Value on the date the Nonpurpose Investment is de-allocated as Gross Proceeds and the date of such de-allocation. In addition, the Energy Commission will record or cause to be recorded the date and amount of all other expenditures of Gross Proceeds of the Bonds, including expenditures for rebate.

(B) Computation of yield on the Bonds. For each Computation Period, the Energy Commission shall determine the yield on the Bonds if required by Section 1.148-4(b) of the Regulations, such determination to be accurate to at least four places when expressed as a decimal.

(C) Computation of Rebate Amount. Subject to the special rules set forth in Subsections 6.2(D) through (J), the Energy Commission will determine the Rebate Amount on each Computation Date. The Rebate Amount as of any Computation Date is the excess of the Future Value of all receipts on Nonpurpose Investments ("Nonpurpose Receipts") over the Future Value of all payments on Nonpurpose Investments ("Nonpurpose Payments"). To the extent amounts received from Nonpurpose Investments are reinvested, these amounts may be netted against each other and not taken

into account in the computation of the Rebate Amount. The Energy Commission shall determine the Nonpurpose Receipts and Nonpurpose Payments as described below.

(1) Nonpurpose Payments. Nonpurpose Payments include (i) actual payments (amounts of Gross Proceeds actually or constructively paid to acquire a Nonpurpose Investment including Qualified Administrative Expenses); (ii) “allocation” payments (for a Nonpurpose Investment that is allocated to the Bonds after already having been acquired by the Energy Commission (e.g., as Transferred Proceeds or sinking fund proceeds), an amount equal to the Value of the Investment on the allocation date); (iii) Computation Date payments (for a Nonpurpose Investment allocated to the Bonds at the end of the preceding Computation Period, the Value of the Investment at the beginning of the Computation Period); (iv) Yield Reduction Payments made with respect to Nonpurpose Investments; and (v) the Computation Date Credit.

(2) Nonpurpose Receipts. Nonpurpose Receipts include (i) actual receipts (amounts actually or constructively received with respect to a Nonpurpose Investment, such as earnings and return of principal, reduced by Qualified Administrative Expenses); (ii) “de-allocation” receipts (for a Nonpurpose Investment that ceases to be allocated to the Bonds or subject to rebate, the Value of the Investment on the “de-allocation” date); (iii) Computation Date receipts (the Value of any Nonpurpose Investment held at the end of any Computation Period); and (iv) rebate receipts (any recovery of an overpayment of rebate).

(D) Exception for the Bona Fide Debt Service Fund. Notwithstanding anything in this Section 6.2 to the contrary, as the Bonds are Governmental Bonds and have a weighted average maturity of greater than 5 years and a fixed rate of interest, earnings on Nonpurpose Investments acquired with amounts held in a Bona Fide Debt Service Fund or any part of a Bona Fide Debt Service Fund as described in Section 3.3 above, including any fund or account established by a Borrower for the payment of debt service on its 2005 Bond-Funded Loan, shall not be taken into account for purposes of calculating the Rebate Amount.

(E) Election to Treat Program Loans Separately. For purposes of the spending exceptions to rebate described in Subsections 6.2(F) through (H), the Issuer, based on instructions of the Energy Commission, elects to treat the financial assistance provided to each Borrower (in the form of Program Loans) separately for purposes of all spending exceptions to the arbitrage rebate requirement. Accordingly, whether any or all of the expenditure exceptions to rebate are satisfied will be determined on the basis of each 2005 Bond-Funded Loan.

(F) Exception for Proceeds Spent within 18 Months. The arbitrage rebate requirement will be treated as satisfied with respect to Gross Proceeds of the Bonds allocated to a particular 2005 Bond-Funded Loan if the conditions set forth in this Subsection (F) are satisfied other than with respect to the 2005A Debt Service Account, in an amount not in excess of the least of the standards set forth in Section 3.2(C) above.

(1) Timetable for Expenditures. Subject to the exception for reasonable retainage and de minimis amounts set forth in paragraph 6.2(G)(3) and Subsection 6.2(I) below, respectively, if an 18-Month Borrower expends an amount equal to the Gross Proceeds (as defined in paragraph 6.2(G)(2)), then the arbitrage rebate requirement set forth in Section 148(f) of the Code will be satisfied with respect to such moneys:

<u>Date</u>	<u>Amount of Net Sale Proceeds</u>
Within Six Months of the Issue Date	15%
Within Twelve Months of the Issue Date	60%
Within Eighteen Months of the Issue Date	100%

(2) Definition of Gross Proceeds. For purposes of this subsection, "Gross Proceeds" means, with respect to each 18-Month Borrower, Sale Proceeds, Investment Proceeds, Transferred Proceeds and Replacement Proceeds, but does not include amounts (i) in a Bona Fide Debt Service Fund, (ii) in a Reasonably Required Reserve Fund, (iii) that, as of the Issue Date are not reasonably expected to be Gross Proceeds but that become Gross Proceeds after the end of the 18-month spending period, (iv) representing Sale or Investment Proceeds derived from payments under any Purpose Investment, and (v) representing repayments of grants.

(3) Reasonable Retainage. Notwithstanding the foregoing stated in paragraph 6.2(G)(1), 100% of the Gross Proceeds will be deemed spent before the end of the eighteen month period following the Issue Date although each 18-Month Borrower may retain an amount not exceeding 5% of Gross Proceeds after the end of the eighteen month period following the Issue Date for reasonable business purposes related to its Project if 100% of the Gross Proceeds, together with amounts earned on such proceeds from the Issue Date to the end of the thirty month period following the Issue Date, are in any event spent before the end of the thirty month period following the Issue Date.

(G) Exception for Proceeds Spent Within Six Months. For purposes of this summary, any Borrower of amounts representing Bond proceeds eligible for the six-month expenditure rebate exception may from time to time be referred to as a "Six-Month Borrower." If this exception is fulfilled with respect to any Six-Month Borrower then the arbitrage rebate requirement will be treated as satisfied with respect to Gross Proceeds of such Borrower's Program Loan(s), other than with respect to allocable amounts in any Reasonably Required Reserve Fund.

(1) Timetable for Expenditure. Subject to the exception for de minimis amounts set forth in Subsection 6.2(I) below, if a Six-Month Borrower expends all of the Gross Proceeds of its Program Loan(s) within six months after the Issue Date, then the arbitrage rebate requirement set forth in Section 148(f) of the Code will be satisfied with respect to such moneys.

(2) Definition of Gross Proceeds. For purposes of this Subsection, "Gross Proceeds" means, with respect to each Six-Month Borrower, Sale Proceeds, Investment Proceeds, Transferred Proceeds and Replacement Proceeds, but does not include amounts (i) in a Bona Fide Debt Service Fund, (ii) in a Reasonably Required Reserve Fund, (iii) that, as of the Issue Date are not reasonably expected to be Gross Proceeds but that become Gross Proceeds after the end of the six-month spending period, (iv) representing Sale or Investment Proceeds derived from payments under any Purpose Investment, and (v) representing repayments of grants.

(H) De Minimis Exceptions. Any failure by a Borrower of amounts representing Bond proceeds to satisfy the final spending requirement of the 18-month expenditure rebate exception or the two-year construction expenditure rebate exception may be disregarded if that Borrower exercised due diligence to complete its Project within the 18-month or two-year period, as applicable, and if the amount of its failure to meet the final spending requirement is no greater than the lesser of 3% of the aggregate financial assistance provided with proceeds of the Bonds (in the form of 2005 Bond-Funded Loans) or its pro-rata portion of \$250,000. Any failure by a Borrower of amounts representing Bond proceeds to meet the six-month exception may be disregarded if the amount of its failure to meet the spending requirement is no greater than the lesser of 5% of its aggregate financial assistance provided with proceeds of the Bonds or its pro-rata portion of \$100,000.

(I) Available Rebate Exceptions. All Borrowers that receive financial assistance provided with proceeds of the Bonds (in the form of 2005 Bond-Funded Loans) expect to qualify for either (i) the exception for construction proceeds spent within two years, (ii) the exception for gross proceeds spent on capital costs within 18 months, or (iii) in the case of certain Costs of Issuance, the exception for gross proceeds spent within six months. Allocable amounts held in the 2005A Debt Service Account for any Borrower of amounts representing Bond proceeds that qualifies for an exception to the arbitrage rebate requirement based on expenditure of proceeds within six or eighteen months will, despite such qualification, be subject to the arbitrage rebate requirement with respect to such moneys beginning on the Issue Date.

Section 6.3. Recordkeeping. In connection with the arbitrage rebate requirement the Energy Commission will maintain the following records:

(A) The Energy Commission will retain records of the determinations made pursuant to Section 6.2 and amounts paid to the United States until six years after the retirement of the last obligation of the issue.

(B) The Energy Commission will record all amounts paid to the United States.

(C) The Energy Commission will contemporaneously furnish the with statements of the Rebate Amount paid and to be paid to the United States.

Section 6.4. Fair Market Value. The Energy Commission will acquire all Nonpurpose Investments allocable to the Gross Proceeds of the Bonds at Fair Market Value. If the Energy Commission invests any Gross Proceeds in certificates of deposit or pursuant to an investment contract, the Energy Commission agrees to comply and to deliver certifications establishing the compliance of the certificate of deposit or investment contract with certain tax constraints set forth in Exhibit A under the definition of “Fair Market Value,” including certain special rules with respect to the investment of proceeds of the Bonds or amounts treated as proceeds of the bonds in investment contracts.

Section 6.5. Retention of Rebate Analyst. The Energy Commission covenants to engage, prior to the first Computation Date, a nationally-recognized firm to perform the necessary and appropriate rebate and/or penalty calculations that may be required to be made from time to time with respect to the Bonds.

Section 6.6. Investment Contracts. As of the date hereof, the Energy Commission has invested amounts on deposit in 2005A Bond Proceeds Account and the 2005A Reserve Account in separate investment contracts (each an “Investment Contract” and, collectively, the “Investment Contracts”) with Royal Bank of Canada, acting through a branch currently located at One Liberty Plaza, New York, New York (“RBC”). Bond Logistix (“BLX”) was engaged by the Issuer and the Energy Commission to act as bidding agent for the solicitation of bids for the Investment Contracts. The procedures set forth under the definition of “Fair Market Value” in Exhibit A hereto relating to the investment of gross proceeds in an investment contract were followed. Specifically, BLX distributed written solicitations for bids for both the 2005A Bond Proceeds Account and the 2005A Reserve Account. Each bid solicitation was distributed to at least three reasonably competitive providers of investment contracts, from which three bids from providers without a material financial interest in the Bonds were received. From such submissions, RBC provided the highest conforming bid and was thus selected as the provider of each Investment Contract. Attached hereto as Exhibit E is a certification of BLX regarding the bidding process, and attached hereto as Exhibit F is a certification of RBC, as provider of the Investment Contracts.

## ARTICLE VII.

### ALLOCATIONS INVOLVING NONPURPOSE INVESTMENTS

Section 7.1. Allocations Inside the Universal Cap. As a general rule Nonpurpose Investments, once allocated to the Bonds, will continue to be so allocated if their aggregate value does not exceed the Universal Cap.

(A) On each Valuation Date, the values of any Nonpurpose Investments allocated to the Bonds and of the Universal Cap must be newly determined for the purpose of calculating the amount of any Unused Universal Cap, except that a Nonpurpose Investment which is held in a bona fide debt service account is not to be taken into account for this purpose. The value of a Nonpurpose Investment between Valuation Dates is its value on the most recent Valuation Date.

(B) Subject to Section 7.2 below and notwithstanding the general rule of this Section 7.1, Nonpurpose Investments allocated to Gross Proceeds of the Bonds will cease to be so allocated when such proceeds are properly allocated to an expenditure for a governmental purpose or when such proceeds become Transferred Proceeds of another issue of obligations.

(C) If on any Valuation Date (or other dates occurring at regular and more frequent intervals of time), the aggregate value of the Nonpurpose Investments allocated to the Bonds is less than the Universal Cap for the Bonds, then Nonpurpose Investments which are not properly allocated to another issue of obligations must be allocated to any Gross Proceeds of the Bonds up to the amount of the Unused Universal Cap.

Section 7.2. Allocations Outside the Universal Cap. If on any Valuation Date the aggregate value of the Nonpurpose Investments allocated to the Bonds exceeds the Universal Cap for the Bonds, then Nonpurpose Investments will cease to be allocated to the Bonds in the following order of priority:

- (A) Nonpurpose Investments of Replacement Proceeds of the Bonds; then
- (B) Nonpurpose Investments of Transferred Proceeds of the Bonds; and then
- (C) Nonpurpose Investments of Sale Proceeds and Investment Proceeds of the Bonds.

Section 7.3. Reallocations. If a Nonpurpose Investment ceases to be allocated to the Bonds pursuant to Section 7.2(B) above, such Investment is susceptible of reallocation under the Universal Cap (if any) calculated with respect to another issue of obligations. A Nonpurpose Investment that is so reallocated may be valued upon reallocation using the same valuation method that was applied with respect to the Universal Cap for the Bonds.

Section 7.4. Savings and Anti-Abuse Rules. An innocent failure to perform a computation required under this Article VII may be considered inconsequential if the general rule of Article VII is satisfied. An allocation of Nonpurpose Investments to the Bonds will not be given effect if the purpose of such allocation is to cause other Nonpurpose Investments not to be allocated to the Bonds in order to avoid compliance with this Article VII.

## ARTICLE VIII.

### FEDERAL GUARANTEE, POOLED FINANCINGS AND HEDGE BONDS

Section 8.1. No Impermissible Federal Guarantee. The Bonds are not impermissibly federally guaranteed under Code Section 149(b), taking into account various exceptions, including exceptions for the following: (i) any guarantee by the Federal Housing Administration, the Veterans' Administration, Fannie Mae, Freddie Mac, or Ginnie Mae; (ii) any guarantee related to investments of Gross Proceeds of the Bonds during an initial temporary period until needed for the governmental purpose of the Bonds, investments as part of a Bona Fide Debt Service Fund, investments of a Reasonably Required Reserve Fund, investments in bonds issued

by the United States Treasury, investments in refunding escrow funds or certain other investments permitted under the Regulations; or (iii) any guarantee (other than an investment in a federally insured deposit or account referenced in Section 149(b)(3)(C)(ii)), of private activity bonds for a qualified residential rental Project under Section 142(a)(7) of the Code, a housing program obligation under Section 11(b) of the United States Housing Act of 1937, or a qualified mortgage bond or a qualified veterans' mortgage bond under Section 143 of the Code.

Section 8.2. Pooled Financings. The Issuer and the Energy Commission reasonably expect that (a) at least 95% of the Net Sale Proceeds of the Bonds will be used directly or indirectly to make or finance 2005 Bond-Funded Loans to Borrowers within three years of the Issue Date, and (b) at least 95% of the reasonably expected legal and underwriting costs associated with the Bonds will be paid not later than 180 days after the Issue Date. The Issuer and the Energy Commission further represent that the payment of legal and underwriting costs associated with the Bonds is not contingent.

Section 8.3. No Hedge Bonds. Since (a) the Energy Commission reasonably expects, in accordance with Section 8.2 above, that at least 95% of the Net Sale Proceeds of the Bonds will be used to make or finance 2005 Bond-Funded Loans to Borrower within three years of the Issue Date, and (b) moneys loans will be treated as expended immediately upon their disbursement since Borrower will only request such disbursements on a "reimbursement" basis, as described in Section 2.4, the Bonds will satisfy the requirement, for purposes of ensuring that the Bonds do not constitute an issue of "hedge bonds" under Section 149(g) of the Code, that at least 85% of the Net Sale Proceeds of the Bonds will be expended for the governmental purposes of the bond issue within three years from the date of issuance of the Bonds. Further, not more than 50% of the Net Sale Proceeds of the Bonds will be invested in Nonpurpose Investments at a substantially guaranteed Yield of four years or more. Accordingly, the Bonds will satisfy the rules of Section 149(g) of the Code.

## ARTICLE IX.

### MISCELLANEOUS

Section 9.1. Purposes. The representations set forth herein are made for the purpose of establishing the reasonable expectations of the Issuer and the Energy Commission as to the amount and use of the proceeds of the Bonds. They are intended and may be relied upon as a certification described in Section 148 of the Code and Section 1.148-2(b)(2) of the Regulations and delivered as part of the record of proceedings in connection with the issuance of the Bonds.

Section 9.2. Compliance with Code. The Issuer and the Energy Commission each acknowledge that the covenants and conditions set forth in this Tax Agreement are based upon the Code and Regulations as they exist on the date hereof and that the Code or Regulations may be subsequently interpreted or modified by the federal government in a manner which is inconsistent with the covenants set forth herein. The Issuer and the Energy Commission each agree that any such subsequent modification or interpretation of the Code or Regulations will be deemed a requirement that must be met pursuant to the general tax covenants set forth herein. The Issuer and the Energy Commission shall not be required to comply with the requirements of

this Tax Agreement to the extent that, in the opinion of Bond Counsel, compliance with such requirements is not necessary to maintain the tax-exempt status of the Bonds.

Section 9.3. Tax Covenant. The Issuer and the Energy Commission each covenant that it shall at all times do and perform all acts and things necessary and within its reasonable control in order to assure that interest paid on the Bonds shall, for purposes of federal income taxation, be not included in gross income. The Issuer and the Energy Commission each covenant that it will not at any time or times permit any of the proceeds of the Bonds to be used directly or indirectly to acquire any Investment if the acquisition of the Investment would cause the Bonds to be classified as “arbitrage bonds” under Section 148 of the Code. The Issuer and the Energy Commission each covenant that it will take no action or omit to take any action if to do so would cause the arbitrage rebate requirement imposed by Section 148(f) of the Code not to be met. The Issuer and the Energy Commission each covenant that it will not permit or cause the proceeds of the Bonds within its control to be spent in any manner that would result in the classification of the Bonds as “private activity bonds” within the meaning of Section 141 of the Code.

Section 9.4. No Early Issuance. The date of issuance of the Bonds has been determined solely on the basis of bona fide financial reasons, in accordance with ordinary financial practice in financing facilities similar to the Project, and has not been determined with a view to prolonging the period between the issuance of the Bonds and expenditure of the proceeds thereof.

Section 9.5. Form 8038-G. The Issuer shall cause an information reporting return on IRS Form 8038-G to be accurately completed and duly filed under Section 149(e) of the Code not later than the 15<sup>th</sup> day of the second calendar month after the close of the calendar quarter in which the Bonds are issued (*i.e.*, to be filed by August 15, 2005). A copy of Form 8038-G is attached in Exhibit C.

Section 9.6. Amendment of Tax Agreement. This Tax Agreement may be amended, changed, modified and/or supplemented only if the concurring written consent of the Issuer and the Energy Commission and an written opinion of Sidley Austin Brown & Wood LLP or other Bond Counsel is obtained to the effect that such amendment, change, modification and/or supplement will not adversely affect the exclusion from gross income of interest on the Bonds for federal income tax purposes.

IN WITNESS WHEREOF, the Issuer and the Energy Commission have each caused this Tax Agreement to be executed in their respective names by a duly authorized officials, each as of this May 11, 2005.

CALIFORNIA INFRASTRUCTURE AND  
ECONOMIC DEVELOPMENT BANK

By:   
Stanton C. Hazelroth  
Executive Director

CALIFORNIA ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT  
COMMISSION


By: \_\_\_\_\_  
Scott W. Matthews  
Acting Executive Director

IN WITNESS WHEREOF, the Issuer and the Energy Commission have each caused this Tax Agreement to be executed in their respective names by a duly authorized officials, each as of this May 11, 2005.

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By: \_\_\_\_\_  
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CALIFORNIA ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT  
COMMISSION

By:  \_\_\_\_\_  
Scott W. Matthews  
Acting Executive Director

## EXHIBIT A

### DEFINITIONS

“2003 Bond-Funded Loan” means a loan to a Borrower originated with the proceeds of the 2003 Bonds.

“2005 Bond-Funded Loan” means a loan to a Borrower originated with the proceeds of the Bonds.

“2005A Bond Indenture” means the 2005A Bond Indenture, dated as of May 1, 2005, between the Issuer and J.P. Morgan Trust Company, National Association, as Trustee, as amended or supplemented from time to time.

“2005A Secured Loan Agreement” means the 2005A Secured Loan Agreement, dated as of May 1, 2005, between the Issuer and the Energy Commission, as amended or supplemented from time to time.

“Bona Fide Debt Service Fund” means a fund or funds, or account or accounts, which may include proceeds of an issue, that is used primarily to achieve a proper matching of revenues with principal and interest payments within each Bond Year and is depleted at least once each Bond Year except for a reasonable carryover amount (not in excess of the greater of the earnings on the fund for the immediately preceding Bond Year or one-twelfth of the principal and interest payments on the issue for the immediately preceding Bond Year).

“Bond Counsel” means Sidley Austin Brown & Wood LLP or any nationally recognized firm of attorneys expert in the issuance of state and local government bonds the interest on which is excluded from federal gross income under Section 103 of the Code and retained by the Issuer and the Energy Commission and satisfactory to the Trustee.

“Bond Year” means each one-year period (or shorter period) from the date of issue of the Bonds that ends at the close of business on the day in the calendar year selected by the Issuer which day is the last day within one year of the Issue Date of the Bonds. If no such day is selected prior to the earlier of the final maturity date of the Bonds or the date that is 5 years after the issue date thereof, each Bond Year ends at the close of business on the date preceding the anniversary date of the date of issue.

“Bond Funded Loan” means a Program Loan that is funded, in whole or in part, with proceeds of the Bonds, as described in Section 1.3. Bond-Funded Loans can include 2003 Bond-Funded Loans and 2005 Bond-Funded Loans.

“Bonds” means, collectively, the \$36,955,000 California Infrastructure and Economic Development Bank Energy Efficiency Master Trust Revenue Bonds, Series 2005A, dated as of May 11, 2005.

“Borrower” means any school, hospital, public care institution, unit of local government or other eligible entity which is a Governmental Unit and has signed a Program Loan Agreement with the Energy Commission to finance a Project under the Program and whose participation in the Program does not adversely affect the exclusion from federal income tax of interest on the Bonds. Unless the context requires otherwise in this Tax Agreement, the term Borrower will ordinarily refer to Borrowers with respect to 2005 Bond-Funded Loans.

“Borrower Tax Certificate” means the tax certificate executed or to be executed by each Borrower regarding the use of proceeds of the Bonds, in connection with the Borrower’s Program Loan Agreement.

“Capital Project” means all Capital Expenditures, plus related working capital expenditures to which the de minimis rule under Regulations Section 1.148-6(d)(3)(ii)(A) applies, that carry out the governmental purposes of an issue.

“Capital Expenditure” shall mean any cost of a type that is properly chargeable to capital account (or would be so chargeable with a proper election) under general federal income tax principles. For example, costs incurred to acquire, construct, or improve land, buildings, and equipment generally are Capital Expenditures. Whether an expenditure is a Capital Expenditure is determined at the time the expenditure is paid with respect to the property; future changes in law do not affect whether an expenditure is a Capital Expenditure.

“Code” means the Internal Revenue Code of 1986, as amended, as in effect on the Issue Date.

“Commingled Fund” shall mean any fund or account containing both Gross Proceeds of an issue and amounts in excess of \$25,000 that are not Gross Proceeds of that issue if the amounts in the fund or account are invested and accounted for collectively, without regard to the source of funds deposited in the fund or account. An open-ended regulated investment company under Section 851 of the Code, however, shall not be deemed to be a Commingled Fund.

“Computation Date” means the date on which a determination of the Rebate Amount is made pursuant to Section 6.2(C) of the Tax Agreement and is either an Installment Computation Date, the Final Computation Date or any other Computation Date selected by the Energy Commission.

“Computation Date Credit” means an amount equal to \$1,000 on the last day of each Bond Year during which there are any amounts of Gross Proceeds allocated to the Bonds and on the final maturity date of the Bonds.

“Computation Period” means the period beginning on the Issue Date and ending on the next succeeding Computation Date and each period beginning on such Computation Date and ending on the next Computation Date thereafter.

“Costs of Issuance” means costs incurred in connection with the sale, issuance and delivery of the Bonds. Depending on the context, Costs of Issuance may or may not include the Underwriter’s Discount.

“De Minimis Discount or Premium” means (a) with respect to the original issue discount of a Bond an amount that does not exceed two percent multiplied by the stated redemption price at maturity of the Bond, and (b) with respect to the original issue premium of a Bond an amount that does not exceed the sum of (i) two percent multiplied by the stated redemption price at maturity of the Bond, plus (ii) an amount that is attributable exclusively to reasonable underwriter’s compensation.

“Eligible Project” means any energy conservation measures which are eligible for funding under the Energy Conservation Assistance Act.

“Energy Commission” means the California Energy Resources Conservation and Development Commission, a commission of the State of California, or any successors and assigns.

“Energy Conservation Assistance Act” means the Energy Conservation Assistance Act of 1979, California Public Resource Code Division 15, Chapter 5.2 (Sections 25410-25421), as amended from time to time.

“Existing Loan” means a Program Loan funded exclusively with amounts other than proceeds derived from the sale of the Bonds or investment earnings thereon, as described in Section 1.3, and includes the 2003 Bond-Funded Loans and the Equity-Funded Loans.

“Equity-Funded Loan” means a loan to a Borrower funded exclusively from amounts that are not the proceeds of a debt obligation.

“Fair Market Value” of an Investment has the following meanings:

(a) *In General.* Except as elsewhere specifically stated below, the Fair Market Value of an Investment is the price at which a willing buyer would purchase the Investment from a willing seller in a bona fide, arm’s-length transaction.

(b) *United States Treasury Obligation.* The Fair Market Value of a United States Treasury Obligation that is purchased directly from the United States Treasury is its purchase price.

(c) *Certificate of Deposit.* The Fair Market Value of a certificate of deposit with a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal is its purchase price provided, the yield on the certificate of deposit is not less than (i) the yield on reasonably comparable direct obligations of the United States and (ii) the highest yield published by the provider and currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(d) *Guaranteed Investment Contracts and Yield Restricted Escrows.* The Fair Market Value of a guaranteed investment contract or an investment purchased for a yield restricted defeasance escrow is its purchase price, provided the Issuer makes a bona fide solicitation for such contract that satisfies all of the following requirements:

(i) The bid specifications are in writing and are timely forwarded to potential providers.

(ii) The bid specifications include all material terms of the bid; material terms are defined as terms that may directly or indirectly affect the yield or cost of the investment.

(iii) The bid specifications include a statement notifying potential providers that submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Issuer or any other person (whether or not in connection with the bond issue), and that the bid is not being submitted solely as a courtesy to the Issuer or any other person for purposes of satisfying the requirements of the applicable provisions of the Regulations.

(iv) The terms of the bid specifications are commercially reasonable, *i.e.*, there is a legitimate business purpose for the term other than to increase the purchase price or reduce the yield of the investment (for example, for solicitations of investments for a yield restricted defeasance escrow, the hold firm period must be no longer than the Issuer reasonably requires).

(v) With respect to purchases of guaranteed investment contracts only, the terms of the solicitation take into account the Issuer's reasonably expected deposit and drawdown schedule for the amounts to be invested.

(vi) All potential providers have an equal opportunity to bid, for example, no potential provider is given the opportunity to review other bids (*i.e.* a "last look") before providing a bid.

(vii) At least three reasonably competitive providers are solicited for bids; reasonably competitive provider is a provider that has an established industry reputation as a competitive provider of the investments being purchased.

The bids received must meet all of the following requirements:

(i) The Issuer receives at least three bids from providers that the Issuer solicited under a bona fide solicitation, which bids meet the requirements set forth immediately above and that do not have a material financial interest in the issue. A lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until fifteen days after the issue date of the issue. In addition, any entity acting as financial advisor with respect to the purchase of the investment at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue. A provider that is a related party to a person that has a material financial interest in the issue is deemed to have a material financial interest in the issue.

(ii) At least one of the three bids received is from a reasonably competitive provider of such types of investments, as described in paragraph (vii) above.

(iii) If the Issuer uses an agent to conduct the bidding process, the agent did not bid to provide the investment.

The winning bid is:

(i) In the context of a guaranteed investment contract, the highest yielding bona fide bid (determined net of any broker's fees).

(ii) In the context of investments other than guaranteed investment contracts, the lowest cost bona fide bid (including any broker's fees). The lowest cost bid is either the lowest cost bid for the portfolio or if the Issuer compares the bids on an investment-by-investment basis, the aggregate cost of a portfolio comprised of the lowest cost for each investment. Any payment received by the Issuer from a provider at the time the investment is purchased (e.g., an escrow float contract) for a yield restricted defeasance escrow under a bidding procedure meeting the requirements of this definition is taken into account in determining the lowest cost bid. In general, the lowest cost bona fide bid (including any broker's fee) may not be greater than the cost of the most efficient portfolio comprised exclusively of United States Treasury Securities — State and Local Government Series ("SLGS") available for purchase from the Bureau of Public Debt. The cost of the most efficient portfolio of SLGS is to be determined at the time that bids are required to be submitted pursuant to the terms of the bid specifications. This requirement to compare to the most efficient SLGS portfolio does not apply if SLGS are not available for purchase on the date that bids are required to be submitted because sales of those securities have been suspended.

The provider of the investments or the obligor on the guaranteed investment contract certifies the administrative costs that it pays (or expects to pay), if any, to third parties in connection with supplying the investment.

The Issuer and the Energy Commission must retain the following records with the bond documents until six years after the last outstanding bond is redeemed:

(i) For guaranteed investment contracts, a copy of the contract, and for other types of purchases, the purchase agreement or confirmation.

(ii) The receipt or other record of the amount actually paid by the Issuer or the Energy Commission for the investment, including a record of any administrative costs paid by the Issuer to third parties and the certification of such costs.

(iii) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid and the bid results.

(iv) The bid solicitation form and, if the terms of the purchase agreement or the guaranteed investment contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose of the deviation. If the Issuer or the Energy Commission replaces an investment in the winning bid portfolio with another investment, the purchase price of the investment must be bid under a bidding procedure meeting the requirements of this definition.

(v) For purchases of investments other than guaranteed investment contracts, the most efficient portfolio of SLGS, determined at the time that the bids were required to be submitted pursuant to the terms of the bid specifications.

For investments purchased for a yield restricted defeasance escrow, a fee paid to a bidding agent is a qualified administrative cost (and therefore excludable from the computation of yield on the investment(s)) only if the following requirements are satisfied:

(i) The fee is comparable to a fee that would be charged for a reasonably comparable investment if acquired with a source of funds other than the gross proceeds of tax-exempt bonds and such fee is reasonable. A fee will be deemed comparable and reasonable if it does not exceed the lesser of \$10,000 or one-tenth of one percent (0.1 percent) of the initial principal amount of the investments deposited in the yield restricted defeasance escrow.

(ii) For transactions in which a guaranteed investment contract and other investments are purchased for a yield restricted defeasance escrow in a single investment (*e.g.*, an issuer bids United States Treasury obligations and an escrow float contract collectively), the broker's fee described in the immediately preceding paragraph will apply to the initial principal amount of the investment deposited in the yield restricted defeasance escrow and a broker's fee will not be considered a qualified administrative cost with respect to the guaranteed investment contract portion of the investment, to the extent that the present value of the fee, as of the date the contract is allocated to the issue, exceeds the lesser of a reasonable amount or the present value of annual payments equal to five one-hundredths of one percent (0.05 percent) of the weighted average amount reasonably expected to be invested each year of the term of the contract. Present value is computed for this purpose by using the taxable discount rate used by the parties to compute the commission or, if not readily ascertainable, a reasonable taxable discount rate.

"Final Computation Date" means the day on which the last bond that is part of the Bonds is discharged.

"Fixed Rate Investment" means any Investment the yield on which is fixed and determinable on its issue date.

“Fixed Yield Bond” means any bond whose Yield is fixed and determinable on its Issue Date using the assumptions and rules set forth in Section 1.148-4(b) of the Regulations.

“Fixed Yield Issue” means any issue at any time that each bond included in it and still outstanding is a Fixed Yield Bond.

“Future Value” means, with respect to any payment or receipt paid or received on any date (or treated as paid or received), the value of the payment or receipt on that date increased by interest assumed to be earned and compounded at the end of each compounding interval over any specified future period using a compounding rate equal to the yield on the Bonds and the compounding interval and financial conventions used to compute yield on the Bonds.

“Governmental Bonds” means any Tax-Exempt Obligations which are not Qualified Private Activity Bonds.

“Governmental Person” means a state or local governmental unit as defined in Section 1.103-1 of the Regulations or any instrumentality thereof, excluding the United States or any agency or instrumentality thereof.

“Gross Proceeds” means with respect to the Bonds, Sale Proceeds, Investment Proceeds, Transferred Proceeds and Replacement Proceeds.

“Installment Computation Date” means the last day of the fifth Bond Year and each succeeding fifth Bond Year.

“Investment” means (i) any security (within the meaning of Section 165(g)(2)(A) or (B) of the Code), (ii) any obligation (other than a Tax-Exempt Obligation, the interest on which is also not a preference item for purposes of calculating the alternative minimum tax imposed by Section 55 of the Code), interests in certain regulated investment companies, and demand deposit SLGS, (iii) any annuity contract (within the meaning of Section 72 of the Code), (iv) any residential real property for family units not located within the jurisdiction of the State and which is not required to implement a court-ordered or approved housing desegregation plan, or (v) any investment-type property (including a contract that would be a hedge (within the meaning of Section 1.148-4(h) of the Regulations except that it contains a significant investment element) that is held as a passive vehicle for the production of income, including any prepayment for property or services if a principal purpose of prepayment is to receive an investment return from the time the prepayment is made until the time payment would otherwise have been made.

“Investment Contract” shall mean a Nonpurpose Investment that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, and also includes any agreement to supply investments on two or more future dates (*e.g.*, a forward supply contract).

“Investment Proceeds” means amounts actually or constructively received from the investment of Sale Proceeds or which are derived from the reinvestment of any such amounts.

“Issue Date” means, generally, for an issue, the first date on which the Issuer receives the purchase price in exchange for delivery of its evidence of indebtedness. In the case of the Bonds, the Issue Date is May 11, 2005.

“Issue Price” when used in connection with an issue of publicly offered obligations is the first price at which at least 10% of the obligations are sold to the public. Bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers are not included in the definition of “public” for purposes of the preceding sentence. If the obligations are privately placed, the Issue Price is the price paid for them by the first buyer. The Issue Price of obligations that are publicly offered in a bona fide public offering is determined on the basis of actual facts and reasonable circumstances existing on the sale date unadjusted for subsequent occurrences. The Issue Price of the Bonds may not exceed their Fair Market Value as of their sale date.

“Issuer” means the California Infrastructure and Economic Development Bank, an entity with the Business, Transportation and Housing Agency of the State of California, or any successors and assigns.

“Master Trust Agreement” means the Amended and Restated Master Trust Agreement, dated as of April 27, 2005, by and between the Issuer and the J.P. Morgan Trust Company, National Association, as successor Trustee, and which provides additional security for any issue or series of Bonds pursuant to a Series Certificate executed by an Issuer Representative.

“Net Sale Proceeds” means Sale Proceeds less the portion of those Sale Proceeds invested in a reasonably required reserve or replacement fund or as part of a minor portion.

“Nonpurpose Investment” means any Investment that is not acquired in furtherance of the governmental purpose of an issue.

“Nonpurpose Payments” means the payments made with respect to a Nonpurpose Investment that are listed in Section 6.2(C)(1) of the Tax Agreement.

“Nonpurpose Receipts” means the receipts received with respect to a Nonpurpose Investment that are listed in Section 6.2(C)(2) of the Tax Agreement.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“Plain Par Bond” means any bond that (i) is issued with original issue discount equal to not more than 2% of its stated redemption price at maturity (which includes call premium), (ii) is issued for a price that does not include accrued interest other than interest that accrues up to one year prior to issuance and is paid within one year afterwards, (iii) bears interest from the issue date at a single stated fixed rate or is a variable rate obligation that pays interest at least annually, and (iv) has a lowest stated redemption price not less than its outstanding stated principal amount.

“Plain Par Investment” means any Investment that is an obligation that (i) is issued with original issue discount or, if acquired on a date other than its issue date, is acquired with market premium or discount that, in either case, is equal to not more than 2% of the stated redemption price of the Investment at maturity (which includes call premium), (ii) is issued for a price that does not include accrued interest other than interest that accrues up to one year prior to issuance and is paid within one year afterwards, (iii) bears interest from the issue date at a single stated fixed rate or is a variable rate obligation that pays interest at least annually, and (iv) has a lowest stated redemption price not less than its outstanding stated principal amount.

“Present Value” means the amount determined by using the following formula:

$$PV = \frac{FV}{(1+i)^n}$$

where “i” equals the discount rate used to compute Present Value divided by the number of Compounding Intervals in a year and “n” equals the sum of (i) the number of whole Compounding Intervals for the period ending on the Computation Date and (ii) a fraction the numerator of which is the length of any short Compounding Interval during such period and the denominator of which is the length of a whole Compounding Interval.

“Private Use” means any activity that constitutes a trade or business that is carried on by Persons other than Governmental Persons. The leasing of property financed or refinanced with proceeds of the Bonds or the access by or use of a Person other than a Governmental Persons to property or services on a basis other than as a member of the general public shall constitute a Private Use.

“Proceeds” means all or any portion of the amounts received by the Issuer from the issuance of the Bonds. Proceeds also includes, unless the context requires otherwise, all or any portion of any amount earned as a result of the investment of proceeds of the Bonds.

“Proceeds Net of Costs” means, unless the context requires otherwise, the Sale Proceeds of the Bonds, minus, to the extent paid from or netted out of the Sale Proceeds, (a) the Underwriter’s Discount, (b) other Costs of Issuance, and (c) amounts, if any deposited into a reasonably required reserve or replacement fund.

“Program” means the energy efficiency loan program established and administered by the Energy Commission to make funds available to eligible Borrowers for energy conservation Project pursuant to the Energy Conservation Assistance Act and the Local Jurisdiction Energy Assistance Law.

“Program Loan” or “Program Loans” means any loan or loans made by the Energy Commission to Borrowers (including Borrowers with respect to other than 2005 Bond-Funded Borrower Loan Agreements) under the Program in accordance with individual Program Loan Agreements with each Borrower, including both existing loans and future loans.

“Program Loan Agreement” means any agreement evidencing a Program Loan or Program Loans, or providing security therefor, made by the Energy Commission to any Borrower under the Program, including without limitation, the 2005A Program Loan

Agreements described in the 2005A Secured Loan Agreement, together with all extensions, renewals, modifications or replacements thereof.

“Project” means, in the case of any Borrower, the Eligible Project (or portion thereof) described in a Program Loan Agreement executed by that Borrower, to the extent it is being financed or refinanced with proceeds of the Bonds.

“Purpose Investment” means any Investment acquired in furtherance of the governmental purpose of a bond issue. The Purpose Investments with respect to the Bonds are the Program Loan Agreements.

“Qualified Guarantee” means, with respect to the Bonds, an unconditional transfer, in any form, of substantially all of the credit risk for all or part of the payments, such as payments for principal and interest, redemption prices or tender prices, on the guaranteed Bonds. The guarantor must not expect to make any payments other than those pursuant to a direct-pay letter of credit or similar arrangement for which the guarantor will be immediately reimbursed. Reasonable procedural or administrative requirements or, in the case of a guarantee against failure to remarket a Qualified Tender Bond, commercially reasonable limitations based on credit risk, will not cause the guarantee to be conditional. The guarantor may not be a co-obligor, nor may the obligor and any related parties combined use more than 10% of proceeds of the guaranteed portion of the Bonds. The guarantee fee must not exceed a reasonable arm’s-length charge solely for the transfer of the credit risk. A guarantee will not be qualified unless, as of the date the guarantee is obtained, the Issuer reasonably expects that the present value of all fees for the guarantee will be less than the present value of the expected interest savings on the issue as a result of the guarantee. For this purpose, present value is computed using the yield on the issue, determined with regard to the guarantee fees, as the discount rate.

“Qualified Hedge” means, with respect to the Bonds, a contract between the Energy Commission or the Issuer and any unrelated party which is entered into primarily to reduce the Energy Commission’s or the Issuer’s risk of interest rate changes with respect to the Bonds. The contract may be an interest rate swap, an interest rate cap, a futures contract, a forward contract, an option or may take another form. A contract will not be a Qualified Hedge if it contains any significant investment element (*i.e.* an expected return). For example, variable rate bonds held by the Issuer do not constitute a qualified hedge. A contract may contain a significant investment element if payments under the contract do not correspond closely in time and amount to the specific interest payment being hedged on the bonds. For example, an interest rate swap generally contains a significant investment element if it requires any payments, other than periodic payments, before its termination date (*i.e.* an up-front payment for an off-market swap). Similarly an interest rate cap contains a significant investment element if the cap rate is less than the on-market swap rate on the date the cap is entered into. For this purpose, the on-market swap rate is the single fixed rate for which the rate or index that is the subject of the cap could be swapped in an on-market interest rate swap that requires only periodic payments and that has a term equal to the term of the cap. A hedge will not be qualified unless it covers, in whole or part, all interest payments on all of the substantially identical bonds of an issue (*i.e.*, all bonds having the same interest rate, maturity and terms). If the hedge does not cover all interest payments on all the substantially identical bonds being hedged, it must cover in whole or part, the same specific identifiable interest payments on each of the substantially identical bonds (*i.e.* a pro-rata

portion of each interest payment on the variable rate bonds of an issue for the first five years). Change to the value of the contract must be based primarily on interest rate changes. The hedged amount may not exceed the Issuer's risk with respect to interest rate changes on the hedged bonds. Payments under the contract must correspond closely, in both time and amount, to the specific interest payments being hedged on the hedged bonds. Payments must not begin to accrue under the contract before the sale date of hedged bonds, and must not accrue longer than the hedged interest payments on the bonds. Payments to the hedge provider must be reasonably expected to be made from the same funds that, absent the hedge, would be reasonably expected to be used to pay principal of and interest on the hedged bonds. The hedge must also be identified by the authority of the bonds on its books and records maintained for the hedged bonds not later than three days after the date on which the contract is entered into. The identification must specify the hedge provider, the terms of the contract, and the hedged bonds. The identification must contain sufficient detail to establish that the requirements of Regulation Section 1.148-4(h)(2) and, if applicable, Regulation Section 1.148-4(h)(4) are satisfied. The hedge must also be noted on all forms filed with the Internal Revenue Service for the issue on or after the hedge is entered into.

"Qualified Private Activity Bond" shall mean any obligation the interest on which is not included in gross income for federal income tax purposes under Sections 103(a) of the Code and which is an exempt facility bond, a student loan bond, a qualified mortgage bond, a qualified veterans' mortgage bond, a qualified small issue bond, a qualified redevelopment bond, or a "qualified 501(c)(3) bond" (as such terms are defined in Sections 141 through 150 of the Code).

"Reasonably Required Reserve Fund" shall have the meaning used in Regulations Section 1.148-2(f)(2) and generally shall mean the portion of a reserve or replacement fund that is eligible to be invested without yield restriction. The amounts invested without yield restriction as part of such a Reasonably Required Reserve Fund for bonds are subject to a size limitation equal to the least of the following: (i) 10 percent of the stated principal amount (or, for any bond issue have more than a de minimis amount of original issue discount or premium, the Issue Price of those bonds); (ii) the maximum annual principal and interest on the bonds; or (iii) 125% of average annual debt service on the bonds.

"Rebate Amount" means, with respect to the Bonds, the amount computed as described in Section 6.2(C) of the Tax Agreement.

"Rebate Requirement" means the arbitrage rebate requirement imposed by Section 148(f) of the Code, as described in Article VI hereof.

"Replacement Proceeds" means amounts with a nexus to the Bonds sufficiently direct to lead to the conclusion that they would have been used for the governmental purposes for which the Bonds are being issued if the proceeds of the Bonds were not so used. Amounts held by the Energy Commission, any party related to it or the Issuer will be treated as Replacement Proceeds if those amounts bear the nexus to the Bonds described in the preceding sentence. Replacement Proceeds include but are not limited to:

(1) sinking funds (debt service funds, redemption funds, reserve funds, replacement funds, or any other fund, to the extent reasonably expected to be used directly or indirectly to pay principal or interest on the Bonds);

(2) pledged funds (any amounts directly or indirectly pledged to pay principal or interest on the Bonds, cast in any form but providing reasonable assurance that they will be available to pay principal or interest on the Bonds, even if the Energy Commission encounters financial difficulty);

(3) negative pledges (amounts held under an agreement to maintain such amounts at a particular level for the direct or indirect benefit of holders or a guarantor of the Bonds, excluding (i) amounts as to which the Energy Commission may have granted to third parties rights superior to the rights of the bondholders or any guarantor of the Bonds and (ii) amounts limited to the reasonable needs for which they are maintained, the required level of which is tested no more frequently than every 6 months and which may be spent without any substantial restriction other than a requirement of replenishment by the next testing date);

(4) other replacement proceeds ((i) amounts arising during any period that the Bonds remain outstanding longer than necessary to achieve the governmental purpose of the Bonds determined based on the Energy Commission's expectations as of the Issue Date and (ii) amounts arising to the extent proceeds of the Bonds are used to finance any working capital reserve).

"Sale Proceeds" means amounts actually or constructively received on the sale and issuance of the Bonds, exclusive of any such amounts that are received as, and which, before the first anniversary of the Issue Date, are used to pay, accrued interest on the Bonds, including amounts such as Accrued Interest.

"Secured Loan" means that loan made by the Issuer to the Energy Commission pursuant to the 2005A Secured Loan Agreement.

"SLG" or "SLGS" means a time deposit security issued by the Treasury pursuant to the Time Deposit State and Local Government Series Program described in 31 C.F.R. part 344.

"State" means the State of California.

"Tax Agreement" shall mean the Tax Certificate and Agreement, dated May 11, 2005, executed by the Issuer and the Energy Commission in connection with the issuance of the Bonds.

"Tax-Exempt Obligation" shall mean any obligation issued by any issuer the interest on which is not included in gross income for purposes of federal income taxation under Section 103 of the Code.

"Tax-Exempt Organization" shall mean an entity organized under the laws of the United States of America or any state thereof which is an organization described in Section 501(c)(3) of the Code and exempt from federal income taxes under Section 501(a) of the Code, or corresponding provisions of federal income tax laws from time to time in effect.

“Transfer Date” means any date that Program Loan Repayments are applied to the redemption of refunded obligations with the result that unspent proceeds of the refunded issue (or any portion thereof) thereupon become allocated to the refunding issue as Transferred Proceeds.

“Transferred Proceeds” means unspent proceeds of a refunded issue that become proceeds of a refunding issue and therefore cease to be treated as proceeds of the refunded issue.

“Treasury Regulations” means the Income Tax Regulations promulgated under Sections 103 and 141 through 150 of the Code by the Department of the Treasury, as amended.

“Treasury” means the United States Department of the Treasury.

“Trustee” means J.P. Morgan Trust Company, National Association, as successor trustee under the Master Trust Agreement and as trustee under any Bond Indenture, or its assign or successor appointed pursuant to the Master Trust Agreement.

“Underwriter” means Goldman, Sachs & Co., as set forth in Section 1.4.

“Underwriter’s Discount” means the amount retained by or paid to the Underwriter as compensation to the Underwriter for underwriting the Bonds.

“Universal Cap” means the maximum Value of Nonpurpose Investments that may be allocated to the Bonds, an amount which may not exceed the aggregate Value of the outstanding Bonds at any time of determination.

“Unused Universal Cap” means, as of any date of calculation, the excess (if any) of the Value ascribed to the Universal Cap for the Bonds over the aggregate Value of the Investments allocated to the Bonds.

“Valuation Date” means the date on which the Universal Cap and the Value of the Nonpurpose Investments allocable to the Bonds thereunder are determined. With respect to new money issues, the first Valuation Date shall be the second year anniversary date of the date of issuance of the Bonds; thereafter, the first day of each Bond Year shall constitute a Valuation Date. With respect to a refunding issue, each date on which proceeds of the refunded issue would become transferred proceeds of the refunding issue, *e.g.*, each date on which principal of the refunded issue is paid with proceeds of the refunding bonds, shall constitute a Valuation Date. In addition, the first date of each Bond Year shall also be a Valuation Date.

“Value” means, in the case of a Bond, the Value of a Bond and, in the case of an Investment, the Value of an Investment.

“Value of a Bond” means, in the case of a Plain Par Bond, its outstanding stated principal amount, plus accrued unpaid interest or in the case of a Plain Par Bond actually redeemed, or treated as redeemed, its stated redemption price on the redemption date plus accrued unpaid interest. In the case of a bond other than a Plain Par Bond, the Value of the bond on any date is its Present Value on that date, using the yield on the issue of which it is a part as the discount factor. In determining the Present Value of a variable rate bond, the initial interest rate on the

bond established by the index or other rate setting mechanism is used to determine the interest payments on that bond.

“Value of an Investment” on any date means, as permitted or required, the Present Value or the Fair Market Value of the Investment or its outstanding principal amount. Paragraphs (A) through (F) below specify the valuation methods required or permitted to be used for the Investments listed:

(A) *Fixed Rate Investments.* A Fixed Rate Investment may be valued at its Present Value or at its Fair Market Value on any date unless it is required to be invested at a restricted yield.

(B) *Plain Par Investments.* A Plain Par Investment may be valued at its outstanding stated principal amount on any date (plus interest accrued but unpaid on that date) unless it is required to be invested at a restricted yield.

(C) *Any Investment.* Any Investment may be valued at its Fair Market Value on any date unless it is required to be invested at a restricted yield.

(D) *Yield Restricted Investments.* An Investment required to be invested at a restricted yield (for example, an Investment held after the expiration of the applicable investment temporary period) must be valued at its Present Value as of any date unless the Investment is required to be valued at Fair Market Value as provided in paragraph (E) below.

(E) *Mandatory Valuation at Fair Market Value.* Subject to paragraph (D) above, Investments deemed to be acquired or disposed of with respect to the Bonds (as a result, for example, of sinking fund deposits or withdrawals) must be valued on the deemed acquisition or disposition date at Fair Market Value unless (i) the Investment was allocated to the Bonds as Transferred Proceeds or as a result of the application of the Universal Cap rule or (ii) the Investment is held in a commingled fund (other than a bona fide debt service account or a commingled fund that operates exclusively as a reserve fund, sinking fund or replacement fund for two or more issues of the Energy Commission).

(F) *Special Rule for Transferred Proceeds.* Notwithstanding any matter stated above, the Value of any Nonpurpose Investment allocable to Transferred Proceeds may not exceed the Value of that Investment used for purposes of applying the arbitrage restrictions with respect to the issue of refunded obligations as of any Transfer Date.

“Yield” means, the Yield computed on the Bonds under Section 1.148-4 of the Regulations and on a Investment under Section 1.148-5 of the Regulations in either case by compounding interest at the end of each compounding interval as further described in paragraphs (A) and (B) below:

(A) When used with respect to the Bonds, Yield means, as of any Computation Date, that discount rate which when used in computing the Present Value of all unconditionally payable payments of principal, interest, fees for Qualified Guarantees on

the Bonds (including those for Qualified Hedges) produces an amount equal to the sum of the issue prices of the obligations that comprise the Bonds. The Yield is computed as of the Issue Date by treating a bond subject to mandatory or contingent early redemption or to certain optional redemption provisions as redeemed on its expected early redemption date for an amount equal to its Value on such date. If a Fixed Yield Bond (i) is subject to optional redemptions within 5 years of the Issue Date and the Yield not taking into account the optional redemption is more than  $\frac{1}{8}$  of 1% above the Yield assuming the early redemption, (ii) is issued at an issue price that exceeds the stated redemption price at maturity by more than  $\frac{1}{4}$  of 1% multiplied by the product of the stated redemption price to maturity and the number of complete years to the first optional redemption date for the bond, or (iii) bears interest at increasing interest rates, the yield on the Bonds containing such Fixed Yield Bond is computed by treating such Fixed Yield Bond as redeemed at its stated redemption price on the optional redemption date that produces the lowest yield on the Bonds. No adjustment will be made on any Computation Date to the yield on the Bonds as computed on the Issue Date unless redemption rights are subsequently transferred to a third party or termination payments are received with respect to Qualified Hedges.

(B) When used with respect to any Investment allocated to the Bonds, Yield means the yield on the Investment computed using the same compounding interval and financial conventions used to calculate the yield on the Bonds. The yield on an Investment allocated to the Bonds is the discount rate that, when used on the date the Investment is first purchased with Gross Proceeds or allocated to Gross Proceeds of the Bonds to compute the Present Value on that date of all unconditionally payable Nonpurpose Receipts from the Investment, produces an amount equal to the Present Value on that date of all unconditionally payable Nonpurpose Payments for the Investment.

“Yield Reduction Payments” means payments made to the United States with respect to any Nonpurpose Investment that (i) are paid at the same time and in the same manner as Rebate Amounts are required to be paid and (ii) are paid with respect to Nonpurpose Investments that, in the case of the Bonds, are allocated to Gross Proceeds that once qualified for the temporary period for capital Project (which has since expired) or that are held in the 2005A Bond Proceeds Account or the 2005A Debt Service Account, as set forth in Regulations Section 1.148-5(c). The Treasury Regulations set forth seven situations in which amounts paid to the United States (including payments of rebatable arbitrage) are treated as payments for a nonpurpose investment that reduces the yield on that investment:

(A) nonpurpose investments during one of the temporary periods available for capital projects, restricted working capital expenditures, pooled financings, or investment proceeds;

(B) nonpurpose investments for variable yield bond issues for any computation period during which at least 5% of the value of the issue is represented by variable yield bonds;

(C) nonpurpose investments allocable to transferred proceeds of a current refunding issue to the extent necessary to reduce the yield on such investments to the yield required by Section 148(a) of the Code;

(D) nonpurpose investments allocable to transferred proceeds of an advance refunding issue to the extent the investment of the refunding escrow allocable to other proceeds of the issue cannot, with zero-yielding investments, meet the yield required by Section 148(a) of the Code;

(E) nonpurpose investments allocable to a reserve or replacement fund or a fund that is in excess of the sizing limits for a Reasonably Required Reserve Fund, but only to the extent that such amounts do not exceed 15% of the issue size or are not expected to pay debt service on the issue;

(F) nonpurpose investments allocable to replacement proceeds of a refunded issue as a result of the application of the universal cap to amounts in a refunding escrow; and

(G) nonpurpose investments allocable to certain permanent funds not treated as replacement proceeds by operation of the effective date rule of Section 1.148-11(f) of the Treasury Regulations.

## EXHIBIT B

### CERTIFICATE OF UNDERWRITER

This Certificate is furnished by Goldman, Sachs & Co. (the “Underwriter”) of the \$36,955,000 California Infrastructure and Economic Development Bank Energy Efficiency Master Trust Revenue Bonds, Series 2005A (the “Bonds”), to establish the initial offering price of the Bonds for purposes of establishing the “issue price” of the Bonds within the meaning of Section 1273 of the Internal Revenue Code of 1986, as amended (the “Code”), and with respect to certain other matters. We hereby certify to you as follows:

#### A. Issue Price

1. The Underwriter reasonably expected on April 27, 2005, which is the date on which the Underwriter entered into a binding written obligation to purchase the Bonds (the “Sale Date”), that the Bonds would be sold for cash to the “general public” (i.e., the general public of investors who are purchasing for their own account as ultimate purchasers without a view to resell, excluding bond houses, brokers and similar persons or organizations acting in the capacity of underwriters or wholesalers).

2. The Underwriter has made a bona fide offering of all of the Bonds to the general public at prices equal to or less than the initial offering prices set forth in the Official Statement, dated April 27, 2005, relating to the Bonds (the “Initial Public Offering Prices”), and reasonably expected all of the Bonds to be sold to the general public, for cash, at prices equal to or less than their Initial Public Offering Price. The aggregate Issue Price of the Bonds expressed as a dollar amount, equal to the sum of all dollar prices determined by applying their Initial Public Offering Prices, is \$39,197,178.85 (representing \$36,955,000.00 aggregate principal amount of the Bonds, plus net original issue premium of \$2,242,178.85).

3. The Underwriter first sold for cash at least 10% of the aggregate principal amount of each maturity of the Bonds to the general public at prices not in excess of their respective Initial Public Offering Prices.

4. The Initial Public Offering Price for each maturity of the Bonds is not more than the fair market value of such maturity as of the Sale Date.

#### B. Callable Premium Bonds

1. The Bonds stated to mature on March 1 in the years 2016, 2017 and 2018 (collectively, the “Callable Premium Bonds”) were sold at a premium and are subject to optional redemption prior to their stated maturity.

2. The issue price of each maturity of the Callable Premium Bonds stated to mature on March 1 in the years 2016, 2017 and 2018 exceeds the stated redemption price at maturity of such Callable Premium Bonds by more than one-fourth of one percent multiplied by the product

of the stated redemption price at maturity and the number of complete years to March 1, 2015, the first optional redemption date for each such maturity of Callable Premium Bonds (102.25%).

3. The Underwriter has determined that the lowest overall yield on the Bonds results by treating the Callable Premium Bonds stated to mature on March 1 in the years 2016, 2017 and 2018 as redeemed on March 1, 2015, at a redemption price of 100% of par.

#### **C. Rating**

Achieving a “Aa3” rating from Moody’s on the Bonds was a vital factor in the undersigned’s being able to market the Bonds at the interest rates at which the Bonds were sold.

#### **D. Reliance and Disclaimers**

We understand that the foregoing information will be relied upon by the Issuer and the Energy Commission with respect to the representations contained in Sections 3.2(C), 5.3(A) and (B) and 6.2(D) of the Tax Agreement and by Sidley Austin Brown & Wood LLP, as Bond Counsel, in connection with its opinion as to the exclusion of the interest on the Bonds from gross income for federal income tax purposes under Section 103 of the Code.

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All terms not defined herein have the meanings ascribed to those terms in the attached Tax Agreement.

Dated: May 11, 2005

**GOLDMAN, SACHS & CO.**

  
\_\_\_\_\_

EXHIBIT C

**FORM 8038-G**

Please see Item Number 10 of the transcript relating to the Bonds.

## EXHIBIT D

### FORM OF BORROWERS' TAX CERTIFICATE

**LOAN NUMBER:** \_\_\_\_\_  
**REVENUE BOND SERIES:** \_\_\_\_\_  
**REVENUE BOND ISSUANCE DATE:** \_\_\_\_\_

In connection with the issuance by the California Infrastructure and Economic Development Bank (the "Issuer"), or other issuer authorized by law, of its Energy Efficiency Master Trust Revenue Bonds, (the "Bonds"), a portion of the proceeds of which will be used to fund, in whole or in part, a loan to the undersigned borrower (the "Borrower"), under the Loan Agreement (the "Loan"), from the California Energy Commission (the "Commission"), to finance the acquisition and/or construction of a capital project of the Borrower (the "Project"), the Borrower hereby certifies, with respect to proceeds of the Loan drawn by the Borrower, as follows:

1. Use of Proceeds and Project. During the period in which the Loan is outstanding, the Borrower shall not (1) sell or otherwise dispose of the Project or any portion thereof to an entity that is not a governmental unit (for this purpose "governmental unit" shall mean only a state or local governmental unit), (2) enter into a lease of the Project or any portion thereof, regardless of type or duration, with an entity other than a governmental unit, (3) enter into a management or service contract with respect to the Project or any portion thereof with an entity other than a governmental unit, unless such management or service contract complies with the requirements of Revenue Procedure 97-13, 1997-1 C.B. 632, as amended by Revenue Procedure 2001-39, 2001-28, I.R.B. 38 (collectively, "Revenue Procedure 97-13"), (4) otherwise enter into any other arrangement with respect to the Project or any portion thereof that gives rise to a "private business use," within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code"), of the Project or any portion thereof, or (5) make any other use of the proceeds of the Loan that gives rise to a "private business use" of the proceeds of the Loan or any portion thereof. The Borrower shall notify the Commission of any of the aforementioned transactions within five business days of the date on which the Borrower enters into an agreement to effect such transaction. In the case of a sale or disposition of the Project or any portion thereof by the Borrower to a governmental unit, such sale or disposition shall obligate the Borrower to require said governmental unit to assume all covenants and responsibilities in this section. In the event the Borrower sells or disposes of the Project or any portion thereof to a Governmental Unit, the Borrower shall, upon such sale or disposition, repay the Loan or portion thereof allocable to the Project or portion thereof, as the case may be, and shall apply any proceeds it derives from the sale of the Project or portion thereof, as the case may be, to such repayment. Such amount shall be due and payable to the Commission within thirty (30) calendar days of receiving an invoice from the Commission for the balance due. As of the date hereof, (a) no portion of the Project is subject to a lease with a person that is not a governmental unit, and (b) no portion of the Project is subject to a management or service contract, with an entity other than a governmental unit, that does not comply with Revenue Procedure 97-13.

2. No Further Loans. The Borrower shall not allocate any portion of the proceeds of the Loan to the financing of a loan by the Borrower to another entity.
3. No Payment of Debt. The Borrower shall not use any portion of the proceeds of the Loan to pay the principal of or interest on any outstanding indebtedness of the Borrower.
4. Expenses Paid in Reimbursement Only. All proceeds of the Loan drawn by the Borrower shall be used solely to reimburse the Borrower for costs of the Project paid by the Borrower (a) in anticipation of receiving such proceeds, (b) prior to the date of requisition for such draw, and (c) after the date of approval of the Commission resolution authorizing payment from proceeds of the Bonds or the Energy Conservation Assistance Account or the Local Jurisdiction Energy Assistance Account.
5. Capital Expenditures Only. The Borrower shall allocate the proceeds of the Loan solely to costs of the Project that constitute capital expenditures (which may include, among other things, "soft costs" that are properly capitalizable into the cost of the Project). No expenditures to which proceeds of the Loan will be allocated by the Borrower will be operating or working capital expenditures.
6. Economic Life of Project. The Project has a reasonably expected economic life that is at least equal to the term of the Loan.
7. No Replacement of Other Moneys. No portion of the proceeds of the Loan is being used as a substitute for other moneys that (a) would have been used to finance the Project to which proceeds of the Loan are being allocated if proceeds of the Bonds were not used to fund the Loan, and (b) have been or will be used to acquire, directly or indirectly, securities or obligations or other investment property.
8. Payment of Loan Debt Service. Payments of debt service on the Loan shall be made directly by the Borrower, and the Borrower shall not set aside any moneys for such purpose in advance of such payments. The Borrower shall not establish any other fund or account that is pledged as collateral for the Loan so as to create a reasonable assurance that amounts in such fund or account would be available to pay debt service on the Loan in the event the Borrower were to encounter financial difficulties. Nothing in this Section is intended to affect the requirement that the Borrower make payments of debt service on the Loan from certain energy-related savings.
9. No Federal Guarantee. The Borrower shall not enter into any arrangement with respect to the Project or any portion thereof obligating the United States or any agency or instrumentality thereof to make payments of any kind to the Borrower.
10. Retention of Records. The Borrower agrees to retain records relating to the Loan until at least six years after repayment of the Bonds.

11. No Purchase of Bonds. The Borrower shall not purchase any of the Bonds, on the open market or otherwise.

\_\_\_\_\_  
BORROWER

\_\_\_\_\_  
FEDERAL EMPLOYER IDENTIFICATION  
NUMBER

\_\_\_\_\_  
PRINTED NAME OF AUTHORIZED  
REPRESENTATIVE

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

EXHIBIT E

**FORM OF BIDDING AGENT CERTIFICATE  
WITH RESPECT TO  
INVESTMENT CONTRACTS**

Please see Item Number 45 of the transcript relating to the Bonds.

EXHIBIT F

**FORM OF PROVIDER'S CERTIFICATE  
WITH RESPECT TO  
INVESTMENT CONTRACTS**

Please see Item Number 46 of the transcript relating to the Bonds.

## EXHIBIT G

### CERTIFICATE OF FINANCIAL ADVISOR

This Certificate is furnished by Public Financial Management, Inc., as financial advisor (the "Financial Advisor") to the California Infrastructure and Economic Development Bank (the "Issuer") with respect to the issuance by the Issuer of its \$36,955,000 California Infrastructure and Economic Development Bank Energy Efficiency Master Trust Revenue Bonds, Series 2005A (the "Bonds"), for purposes of establishing certain matters.

Capitalized terms used and not defined herein are as defined in the Tax Certificate to which this certification is attached as Exhibit G.

The undersigned DOES HEREBY CERTIFY as follows:

#### **A. Average Maturity.**

1. The Financial Advisor is familiar with the calculation of the "average maturity" of the Bonds, as such term is used in Section 147(b) of the Code.

2. The information contained in Schedule 1 attached hereto is true, accurate and complete.

3. Based on the information and calculations set forth in Schedule 1 attached hereto, the average maturity of the Bonds does not exceed 6.2826 years.

#### **B. Callable Premium Bonds**

4. The Bonds stated to mature on March 1 in the years 2016, 2017 and 2018 (collectively, the "Callable Premium Bonds") were sold at a premium and are subject to optional redemption prior to their stated maturity.

5. The issue price of each maturity of the Callable Premium Bonds stated to mature on March 1 in the years 2016, 2017 and 2018 exceeds the stated redemption price at maturity of such Callable Premium Bonds by more than one-fourth of one percent multiplied by the product of the stated redemption price at maturity and the number of complete years to March 1, 2015, the first optional redemption date for each such maturity of Callable Premium Bonds (102.25%).

6. The Underwriter has determined that the lowest overall yield on the Bonds results by treating the Callable Premium Bonds stated to mature on March 1 in the years 2016, 2017 and 2018 as redeemed on March 1, 2015, at a redemption price of 100% of par.


#### **C. Yield on the Bonds.**

We have calculated the arbitrage yield on the Bonds to be 3.5690729%, in accordance with Section 148 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

The undersigned recognizes that the representations set forth above will be relied upon by the California Infrastructure and Economic Development Bank in making certain of the representations set forth in the Tax Certificate and by Sidley Austin Brown & Wood LLP, Bond Counsel, in rendering its opinion that the interest on the Bonds is not includable in the gross income of the owners thereof for federal income tax purposes.

Dated: May 11, 2005

**PUBLIC FINANCIAL MANAGEMENT,  
INC.**

By: 

Title: Managing Director

SCHEDULE I  
TO EXHIBIT G-1

**Average Maturity Calculation**

<i>Year</i>	<i>Principal</i>	<i>Price (%)</i>	<i>Price (\$)</i>	<i>Term</i>	<i>Dollar-Years</i>
2006	\$2,220,000	99.839%	\$2,216,425.80	0.805556	\$1,785,455.10
2007	\$3,190,000	103.699%	\$3,307,998.10	1.805556	\$5,972,775.82
2008	\$3,785,000	102.668%	\$3,885,983.80	2.805556	\$10,902,345.17
2009	\$3,690,000	99.640%	\$3,676,716.00	3.805556	\$13,991,948.63
2010	\$3,580,000	107.908%	\$3,863,106.40	4.805556	\$18,564,374.14
2011	\$3,470,000	108.689%	\$3,771,508.30	5.805556	\$21,895,702.64
2012	\$3,410,000	109.135%	\$3,721,503.50	6.805556	\$25,326,900.47
2013	\$3,165,000	109.447%	\$3,463,997.55	7.805556	\$27,038,426.86
2014	\$2,650,000	109.688%	\$2,906,732.00	8.805556	\$25,595,391.40
2015	\$2,325,000	109.655%	\$2,549,478.75	9.805556	\$24,999,056.65
2016	\$1,830,000	108.886%	\$1,992,613.80	10.805556	\$21,531,300.00
2017	\$1,405,000	108.292%	\$1,521,502.60	11.805556	\$17,962,184.15
2018	\$1,235,000	107.703%	\$1,330,132.05	12.805556	\$17,033,080.45
2019	\$1,000,000	98.948%	\$989,480.00	13.805556	\$13,660,321.55
	<u>\$36,955,000</u>		<u>\$39,197,178.65</u>		<u>\$246,259,263.04</u>
Average Maturity	<u>6.2826</u>				

## EXHIBIT H

### **CERTIFICATE OF LAMONT FINANCIAL SERVICES CORPORATION AS FINANCIAL ADVISOR**

This Certificate is furnished by Lamont Financial Services Corporation, as financial advisor (the "Financial Advisor") to the California Infrastructure and Economic Development Bank (the "Issuer") with respect to the issuance by the Issuer of its \$36,955,000 California Infrastructure and Economic Development Bank Energy Efficiency Master Trust Revenue Bonds, Series 2005A (the "Bonds"), for the benefit of the California Energy Resources Conservation and Development Commission (the "Energy Commission"), for purposes of establishing the reasonableness of the establishment and funding of the 2005A Reserve Account.

Capitalized terms used and not defined herein are as defined in the Tax Certificate to which this certification is attached as Exhibit H.

The undersigned DOES HEREBY CERTIFY as follows:

7. The undersigned assisted the Issuer and the Energy Commission in structuring the Bonds, including analyzing and determining the cash-flows necessary to be able to obtain a "Aa3" rating from Moody's Investors Service, Inc. for the Bonds. The Bonds are secured in major part by an existing portfolio of energy efficiency loans (the "Pledged Loans") originated by the Energy Commission with amounts other than proceeds of the Bonds, and the undersigned has reviewed the Pledged Loans and the cash-flow the Energy Commission reasonably expects to receive on the Pledged Loans over their respective terms.

8. The cash-flows reasonably expected to be received on the Pledged Loans, together with investment earnings on amounts in the 2005A Reserve Account (based on an investment agreement being acquired for the 2005A Reserve Account on the date hereof), are expected to equal or exceed 110% of the debt service payable in each year on the Bonds ("110 Coverage").

9. The establishment and funding of the 2005A Reserve Account in the amount of the Debt Service Reserve Requirement for the Bonds, initially \$7,871,415.00, which was funded from other than proceeds derived from the sale of the Bonds, was an important factor, together with 110 Coverage, in creating sufficient default tolerance with respect to the Pledged Loans to achieve a "Aa3" rating from Moody's Investors Service, Inc. on the Bonds.

The undersigned recognizes that the representations set forth above will be relied upon by the Issuer and the Energy Commission in making certain of the representations set forth in the Tax Certificate and by Sidley Austin Brown & Wood LLP, Bond Counsel, in rendering its opinion that the interest on the Bonds is not includable in the gross income of the owners thereof for federal income tax purposes.

Dated: May 11, 2005

**LAMONT FINANCIAL SERVICES  
CORPORATION**

By: Ernan ONeil  
Title: EXECUTIVE VICE President

EXHIBIT I

**LOAN DEMAND ANALYSIS REPORT, DATED APRIL 26, 2005**

**(COPY ATTACHED)**

California Energy Commission

**Loan Demand Analysis Report**

For  
The Energy Efficiency Financing Program  
Serving  
Units of Local Government and Publicly Owned  
Schools and Hospitals

Methodology for making a reasonable determination that there is sufficient demand for loans from the ECA Account to warrant authorizing the sale of \$40 million Revenue Bonds, Series 2005A through the I-Bank.

April 26, 2005

Prepared by

Daryl Mills

Public Programs Office  
California Energy Commission

**Background:** Approximately \$40 million of proceeds derived from the sale of the proposed Series 2005A revenue bonds (the "2005A Bonds") are expected to be available for loans to qualified public agency borrowers. By the time of the actual sale of the bonds, in May 2005, the Energy Commission will have already originated approximately \$5 million in loans to be funded with the new bond proceeds, making the net proceeds of the 2005A Bonds available for loans approximately \$35 million.

This report is written to support the Energy Commission's findings that it has a reasonable expectation that it will originate sufficient loans to fully encumber and disburse all of the proceeds of the proposed \$40 million in bonds within the three-year time frame required under federal income tax law. To meet this loan origination rate, the Energy Commission forecasts the need to issue loans to encumber all of the 2005A Series Bond funds within 16-22 months of the issue date of the 2005A Bonds. This provides the Energy Commission with a reasonable assurance that the proceeds of the 2005A Bonds will be fully liquidated within 36 months (3 years) from the date of issuance of the 2005A Bonds. Our expectation is that we will loan between \$18 and \$25 million per year from proceeds of the 2005A Bonds or an average of between \$1.5 million - \$2.1 million per month. This amount is well within the range of historical loan origination rates (shown in table 1 below) over the last 4.5 years of the program for qualifying public agency borrowers.

Table 1  
Energy Commission Loan Annual Origination Rate (June 2000 – December 2004)<sup>2</sup>  
Net loans after eliminating cancelled loan awards

<b><i>Fiscal Year</i></b>	<b><i>Net Amount Loaned/year</i></b>	<b><i>Average Loaned/month</i></b>
2000-2001	\$16,898,088	\$1,408,174
2001-2002	\$32,100,010	\$2,675,000
2002-2003	\$11,023,052	\$918,587
2003-2004	\$29,127,658	\$2,427,305
2004-2005 <sup>1</sup>	\$4,768,116	\$794,686
<b>Total 4.5 year period</b>	<b>\$93,916,924</b>	
<b>Average Volume (4.5 years)</b>	<b>\$20,870,428</b>	<b>\$1,739,202</b>
<sup>1</sup> 2004-2005 – Includes July 1- Dec 31 only, but does not represent the \$6 million in backlog we currently have for 2005A Bond proceeds.		
<sup>2</sup> The June 2000- December 2004 period was chosen since prior to June 2000 the program had not yet received an augmentation of \$50 million from AB 29X and the program operated at a much lower level of funding.		

#### **Loan volume history.**

Table 1 shows loan awards during the last 4.5 years of the program beginning in fiscal year 2000-2001 through December 30, 2004. This period reflects the influx of \$50 million in new funding to the ECA Account from AB 29X and the successful lending of over \$28 million in proceeds of a similar series of revenue bonds issued for the benefit of the Energy Commission in March 2003 (the "2003A Bonds") and \$13 million in other program funds. The data shows that the dollar volume of loans originated during this period averaged approximately \$20,870,428 per year or approximately \$1,739,202 per month. This average loan volume, if continued over the next two years, is within the origination range necessary to use the 2005A Bond proceeds and to spend them down within the three-year period required under federal income tax law.

These historical loan origination rates in and of themselves offer strong evidence to conclude that the Energy Commission can accomplish its lending goals. We have completed additional analysis of market conditions and a number of external market variables to determine if there have been any major changes that would affect future demand for loans. A review of the following factors help us to verify that market conditions over the next few years support our conclusion that the Energy Commission has a reasonable expectation that there will be sufficient demand for loans to disburse approximately \$40 million in Bond Proceeds over the three-year period beginning with the date of issuance of the 2005A Bonds.

**Factors that provide reasonable support for a sustained high demand for Energy Commission loans:**

The Energy Commission's Energy Efficiency Division staff analysis indicates that demand for loans from local governmental units, state schools, including the University of California and California State University, will continue to be strong. Our conclusions are based on a review of critical factors influencing future market conditions that will drive demand for Energy Commission loans. These conditions can be characterized as:

- 1) High retail consumer energy prices will continue, particularly for the small and medium commercial rate classes.
- 2) Competitive financing terms will provide an inducement to borrowers to use Energy Commission loan financing for new projects;
- 3) There will continue to be attractive investment opportunities for energy efficiency projects and increased pressure for public agencies to turn to these projects as a way to reduce operating costs in response to tight public agency budgets.
- 4) High levels of incentives will continue to be offered by other Energy Commission and utility programs throughout the Series 2005A Bonds loan origination period. These incentives are a result of Public Utility directives for the major Investor Owned Utilities to expand rebates for energy-efficient products thereby driving consumers to invest more heavily in the types of goods and services funded by Energy Commission loans.
- 5) There continues to be strong interest from energy services companies, small contractors and equipment vendors in steering public agency clients to the Energy Commission's financing programs
- 6) There continues to be a high level of commitment of the Energy Commission, other state agencies and local units of government to energy efficiency improvements.
- 7) The Energy Commission has developed even stronger links with public agency associations and utility representatives. Many have agreed to help market Energy Commission loans to their organizations and customers. These new relationships are expected to accelerate the rate at which loans are made by the Energy Commission.

The following data is provided in support of these findings.

**1. High retail consumer energy prices will continue, particularly for the small and medium commercial rate classes.**

According to the Retail Electricity Price Forecast conducted by the Energy Commission Electricity Supply Office, retail rates, especially for the small commercial customer class, are expected to continue to escalate throughout the loan origination and payback periods. The Energy Commission is the State's energy policy agency with responsibilities to look to the future and forecast electric supply and demand and to use those and other variables to forecast future wholesale and retail electric rates. In doing so, it coordinates with the Public Utility Commission. Continued high retail electric prices indicate that the cost-effectiveness of energy efficiency improving technologies will continue. The Energy Commission's Statewide forecast for commercial and industrial rate schedules in nominal dollars shows that there is a general trend for electric prices to steadily increase. The market fundamentals that affect electricity pricing are relatively fixed. Utility debt recovery is a significant portion of rates and

is relatively fixed. Long-term contracts for wholesale electric purchases are in place through 2009, so no new lower cost energy supplies are readily available. California relies significantly on natural gas-fired generation and fuel costs will continue to be high.

**2. Competitive financing terms will provide an inducement to borrowers to use Energy Commission loan financing for new projects.**

The Energy Commission loan interest rate policy is to establish interest rates at a competitive rate and comparable or better than alternative financing available from the municipal lease market. Our loan terms continue to provide a significant advantage over other lending sources. Features that are particularly attractive to our borrowers include:

- No requirement of equipment as security
- Longer term financing available to lower payments (up to 15 years).
- Repayment of loans from avoided energy cost savings (no impact on annual capital outlay budgets because loan repayments are made from avoided operating costs.)

**3. There will continue to be attractive investment opportunities for energy efficiency projects and increased pressure for public agencies to turn to these projects as a way to reduce operating costs in response to tight public agency budgets.**

Most local agencies continue to be under increased pressure to turn to energy saving projects as a way to reduce operating costs, meet new energy standards and help mitigate critical cuts to government in response to tight public agency budgets. The opportunities continue to be abundant for potential local government and school district borrowers to save money by using Energy Commission loan funds to update and modernize their energy using systems. Factors that point to continued demand include:

- Although there is a fairly high penetration of new efficient lighting technologies, there continues to be opportunities to further energy efficiency in the lighting area. Recent introduction of new 2<sup>nd</sup> and 3<sup>rd</sup> generation T-8's are making it attractive to replace older T-8 lighting systems as they wear out as well as convert to this technology.
- There is a tremendous need to replace old worn-out and inefficient HVAC equipment with new high-efficiency units. The loan program will continue to provide a means for local governments and schools to replace or retire inefficient equipment. Replacement is also driven by additional pressure to improve indoor air quality conditions.
- The Energy Commission's recent LED traffic signal survey findings point to the fact that many local governments are behind schedule in complying with new energy codes that require them to replace traffic signal lights and pedestrian signals. About 35% of the signals have yet to be converted to LED technology as required by the 2001 energy codes. Currently, local governments must replace their traffic signals with new LED technology. In the interim they are allowed to use their existing supply of bulbs, if purchased before the standards went into effect. These supplies are nearly exhausted. Noncomplying traffic signals cannot legally be sold in California, and manufacturer's and retailers selling noncomplying traffic signals are subject to severe penalties. According to our survey, 59 local jurisdictions have active plans to convert to LED signals in the very near future. The Energy Commission's loan program will allow many of these local governments to comply with the new codes without impacting their own capital outlay budgets.
- PV technology – there continues to be a strong interest in funding photo-voltaic technology. In the last 2 years, demand for funding local government and school PV projects has been rising steadily. There will continue to be a strong demand for PV project development from local government.

- Other “distributed generation” technologies continue to be cost-effective including small natural gas fired micro turbines.

**4. High levels of incentives will continue to be offered by other Energy Commission and utility programs throughout the Series 2005A Bonds loan origination period. These incentives are a result of Public Utility directives for the major Investor Owned Utilities to expand rebates for energy-efficient products thereby driving consumers to invest more heavily in the types of goods and services funded by Energy Commission loans.**

The State’s Energy Action Plan identifies reduction of energy use per capita as the number one priority to meet California’s incremental increase in energy needs over the next decade. Increasing energy supply from renewable energy is the number two priority. Recent actions of the California Public Utility Commission (CPUC), including CPUC decision 04-09-060, established goals to obtain over 55% of the incremental electric energy needs between 2004 and 2013 through improving the energy efficiency. This is equivalent to avoiding construction of 5 new power plants over the next 10 years. The CPUC Decision establishes energy savings goals for Energy Efficiency programs for 2006 and beyond. To that end, the Public Utility Commission is endorsing an ongoing and well funded program that would double the total amount of incentive funding available for energy efficiency by 2013. The strategy would increase energy incentive funding approximately 10-15% each year to achieve the state energy saving policy goals. This policy insures a steady increase in funding not only over the next few years during the loan origination period for the 2005A Bonds, but also continuing into the future to support additional series of Bonds.

The PUC has also made additional commitments to continue incentives for renewable energy and distributed generation projects as well as natural gas efficiency improvements. All these factors will further stimulate demand for loans as part of the total financing package to complete energy efficiency improving and renewable energy projects.

**5. There continues to be strong interest from energy services companies , small contractors and equipment vendors in steering public agency clients to the Energy Commission’s financing programs.**

According to a recent survey conducted by the Energy Commission (CEC 400-2005-001), approximately 32% of ESCO customers consist of local governments and schools. Approximately 37% of the last \$94 million in loans awarded by the Energy Commission over the last 4.5 years has been to borrowers seeking funding for projects being proposed to them by an energy services company. The ESCO industry continues to consolidate with fewer, yet more substantial, companies dominating the field making marketing loan programs through them to clients less cumbersome.

**6. There continues to be a high level of commitment of the Energy Commission, other state agencies and local units of government to energy efficiency improvements.**

Recent Executive Order S-20-04, issued by Governor Arnold Schwarzenegger, commits the state to “aggressive action to reduce state building electricity usage” by retrofitting, building and operating the most energy and resource efficient buildings feasible. The Green Building Action Plan directs state agencies to reduce energy use by 20%. The action plan encourages cities, counties and schools to do the same. The University of California’s Board of Regents also expressed a similar commitment to aggressively pursue energy efficiency. There continues to be strong policy support for the types of projects being funded by the Energy Commission loans.

7. **The Energy Commission has developed strategic links with public agency associations and utility representatives, which have agreed to help market loans to their organizations. Many have agreed to help market Energy Commission loans to their organizations and customers. These new relationships are expected to accelerate the rate at which loans are made by the Energy Commission.**

The Energy Commission continues to strengthen ties to local associations representing potential borrowers as well as both municipal and investor owned utilities. By supporting the annual trade shows and appearing on the agendas of these organizations, the Energy Commission continues to nurture our strong working relationships with the League of Cities, County Supervisors Association, the School Associations (CASH, CASBO and CSBA), the Community College Chancellor's office, the University of California and California State Universities. The Energy Commission continues to strengthen ties with the utilities and will serve on program peer review committees that help improve the synergy between utility programs and the Energy Commission's programs. Recently, many of these organizations have agreed to help send out loan program information through their newsletters and several have agreed to e-mail Energy Commission prepared information directly to their clients as periodic reminders regarding Energy Commission programs. These organizations have been key to the success of Energy Commission programs in the past and their renewed commitments to assist the Energy Commission to market services and loans are a strong indicator of continued success.

#### **Conclusions and Recommendations:**

After an assessment of our historical program performance and an evaluation of critical factors influencing future loan demand, we conclude that there is a reasonable expectation that there will be sufficient demand for financing energy projects such that the Energy Commission will fully disburse the \$40 million in 2005A Bond proceeds within three years from the date of issuance of the 2005A Bonds.

1. Over the last 4.5 years the Energy Commission has successfully loaned \$94 million to local units of government. The number of potential future borrowers from Series 2005A Bond proceeds continues to be substantial and will continue to include repeat customers. Potential borrowers include nearly 1,000 school districts, over 470 cities, 58 counties, thousands of special districts and over 100 community college districts, state hospitals, colleges and universities. The staff estimates that these public agencies have about \$1 billion in cost effective energy projects untapped in their facilities.
2. The Energy Commission has a uniquely qualified staff of engineers and project managers with many years of experience in the Energy Efficiency field to provide technical review and support to the program.
3. As a result of our 24 years in the energy efficiency marketplace offering loans and other energy programs to these groups, the Energy Commission has developed strong working relationships with potential borrowers and has many repeat customers.
4. The Energy Commission continues to maintain strong relationships with its customer base.
5. The Energy Commission has demonstrated that it can successfully market the availability of its loans and services through the utility organizations and local government and school associations. The Energy Commission continues to maintain a strong outreach effort to make local agencies aware of its programs including loans. The Energy Commission is working with a number of state agencies, local trade associations and utilities. The Energy Commission regularly exhibits at the trade shows of regional and statewide meetings of most local government and school organizations.

6. The California Public Utility Commission's strong advocacy for energy efficiency programs ensures that there will continue to be a large number of well-funded complimentary utility rebate programs. Budgets for these programs are expected to increase between 10 and 15% per year. These larger programs will run concurrently with the 2005A loan origination period and help stimulate the demand for Energy Commission Financing.
  7. The Energy Commission has developed strong links with energy services companies, and they are well aware of the attractive and simple financing available at the Energy Commission. We see a growing trend for these companies to steer their clients toward the Energy Commission for energy project loans. During the last four years of program operation, energy services companies have helped bring in approximately 37% of the loan volume.
  8. There continue to be new opportunities to fund new and emerging technologies as well as to replace old and worn-out equipment with state-of-the-art energy efficient equipment.
  9. We believe there will continue to be a strong desire of local government and school borrowers to try to reduce their energy costs and a strong need for attractive financing terms as a means to replace badly deteriorating energy infrastructure.
- Based on the analysis contained in this report, the staff of the Energy Commission recommends that the Energy Commission proceed with the proposed sale of 2005A Bonds as there is reasonable expectation on the part of the Energy Commission that the demand for loans is sufficiently strong to use the estimated \$40 million in 2005A bond proceeds within a 3-year period from the issuance of the 2005A Bonds, as required by the Internal Revenue Code.